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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

FIRST DIVISION

[G.R. No. 162063. March 31, 2014]

LEONORA A. PASCUAL, represented by FLOREBHEE N. AGCAOILI, Attorney-In-Fact, *petitioner, vs.* **JOSEFINO L. DAQUIOAG, in his capacity as CENRO of BANGUI, ILOCOS NORTE; EMILIO R. D. DOLOROSO, in his capacity as LAND MANAGEMENT OFFICER III, DENR, CENRO-BANGUI, ILOCOS NORTE; ALBERTO B. BAGUIO, in his capacity as SPECIAL LAND INVESTIGATOR; RENATO C. TUMAMAO and NILO C. CERALDE, in their capacities as CARTOGRAPHERS/DPLIS, CENRO-BANGUI, ILOCOS NORTE; and CATALINA ALMAZAN-VILLAMOR,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; JUDGMENTS; EXECUTION OF; A JUDGMENT IS NOT CONFINED TO WHAT APPEARS ON THE FACE OF THE DECISION, FOR IT EMBRACES WHATEVER IS NECESSARILY INCLUDED THEREIN.— [T]he phrase "placing the winning party, Catalina Almazan Villamor in the premises of the land in question" was not expressly stated in the dispositive portion of the decision of the Regional Executive Director of the DENR. But the absence of that phrase did not render the directive to enforce invalid because the directive was in full consonance with the decision

sought to be executed. A judgment is not confined to what appears on the face of the decision, for it embraces whatever is necessarily included therein or necessary thereto.

2. ID.; ID.; ID.; ID.; NOTWITHSTANDING THE ABSENCE OF EXPRESS MENTION IN THE DISPOSITIVE PORTION, THE DELIVERY OF POSSESSION WAS NECESSARILY INCLUDED IN THE DECISION CONSIDERING THAT THE CLAIM OF A PARTY HAD BEEN BASED ON OWNERSHIP.— Under the decision of the Regional Executive Director of the DENR, as upheld by the Secretary of the DENR and the OP, the three lots subject of Pascual's free patent application were covered by the *Titulo Propiedad* of Marcos Baria, the predecessor-in-interest of Almazan Villamor. x x x The denial of Pascual's free patent application was based on the recognition of Almazan Villamor's ownership of the subject properties. The consequence of the denial was the directive for Pascual to refrain from entering the property, and from possessing the subject property declared to be owned by Almazan Villamor. Upon the final finding of the ownership in the judgment in favor of Almazan Villamor, the delivery of the possession of the property was deemed included in the decision, considering that the claim itself of Pascual to the possession had been based also on ownership. Possession is an essential attribute of ownership. Whoever owns the property has the right to possess it. Adjudication of ownership includes the delivery of possession if the defeated party has not shown any right to possess the land independently of her rejected claim of ownership. In *Nazareno v. Court of Appeals*, the Court affirmed the writ of execution awarding possession of land, notwithstanding that the decision sought to be executed did not direct the delivery of the possession of the land to the winning parties. x x x Accordingly, Daquioag's memorandum placing Almazan-Villamor in possession of the properties was not inconsistent with the decision of the Regional Executive Director of the DENR, as affirmed by the OP. With the clear recognition of Almazan-Villamor's ownership, and in default of any credible showing by Pascual of any valid justification for her to continue in possession of the properties despite the denial of her free patent application, possession must be restored to Almazan-Villamor as the rightful owner and possessor of the properties. Hence, Daquioag's assailed memorandum could not be disparaged as having been issued

with grave abuse of discretion amounting to lack or in excess of jurisdiction. The RTC correctly held that placing Almazan-Villamor in possession of the properties was necessary to give effect to the order requiring Pascual to refrain from entering the premises.

3. ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; DISMISSAL OF THE PETITION DUE TO IMPROPRIETY OF THE CHOSEN REMEDY, UPHELD.— [W]e also conclude that the CA rightly sustained the RTC's dismissal of Pascual's petition for *certiorari* because of the impropriety of her chosen remedy. A special civil action for *certiorari* is the proper action to bring when a tribunal, board or officer exercising judicial or quasi-judicial function has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law. The exercise of judicial function consists in the power to determine what the law is and what the legal rights of the parties are, and then to adjudicate upon the rights of the parties. The term quasi-judicial function applies to the action and discretion of public administrative officers or bodies that are required to investigate facts or to ascertain the existence of facts, hold hearings, and draw conclusions from them as a basis for their official action and to exercise discretion of a judicial nature. However, the issuance by Daquioag of the assailed memorandum implementing the writ of execution did not derive from the performance of a judicial or quasi-judicial function. He was not thereby called upon to adjudicate the rights of the contending parties or to exercise any discretion of a judicial nature, but only performing an administrative duty of enforcing and implementing the writ.

APPEARANCES OF COUNSEL

E.A. Andres & Associates for petitioner.
Arthur C.K. Villaluz for private respondent.

D E C I S I O N

BERSAMIN, *J.*:

The writ of execution issued upon a final judgment adjudicating the ownership of land to a party may authorize putting her in possession although the judgment does not specifically direct such act.

The Case

By this appeal, petitioner seeks the review and reversal of the decision promulgated on January 30, 2004,[1] whereby the Court of Appeals (CA) affirmed the judgment rendered on November 7, 2002 by the Regional Trial Court (RTC) in Laoag City dismissing the petition for *certiorari* filed by petitioner in Special Civil Action Case No. 12150-13 to assail the writ of execution and the execution proceedings in a land dispute decided by the Department of Environment and Natural Resources (DENR).[2]

Antecedents

On January 24, 1984, petitioner Leonora Pascual filed a Free Patent Application [(1-1)409] over Lot No. 13194, Lot No. 13212 and Lot No. 13214, Cad. 577-D of the Vintar Cadastre located at Barangay Number 7, Alejo Malasig (Pait), formerly Barangay No. 6, Parut, Vintar, Ilocos Norte. Respondent Catalina Almazan-Villamor presented a protest, claiming that Pascual had no right to apply for title over the properties.

In the decision dated September 7, 1992,[3] the Executive Director of Region I of the DENR in San Fernando, La Union gave due course to the protest of Almazan-Villamor, and rejected the free patent application of Pascual, *viz*:

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[1] *Rollo*, pp. 40-48; penned by Associate Justice Jose L. Sabio, Jr. (retired/deceased), with Associate Justice Delilah Vidallon-Magtolis (retired) and Associate Justice Hakim S. Abdulwahid concurring.

[2] *Id*. at 129-138; penned by Presiding Judge Philip G. Salvador.

[3] Records, pp. 126-129.

WHEREFORE, premises considered, the protest of the herein Claimant-Protestant Catalina Almazan Villamor is hereby as it is given due course. The application of Leonora A. Pascual under Free Patent (1-1) 409 is hereby as it is rejected and dropped from the record of this office and ordered to refrain from entering the area.

Claimant-Protestant Catalina Almazan Villamor is advised to file Free Patent Applications immediately after the finality of this Decision.

SO ORDERED.[4]

Pascual appealed to the Secretary of the DENR, who affirmed the decision of the Regional Executive Director. Pascual thereafter appealed to the Office of the President (OP), which affirmed the decision of the Secretary of the DENR on August 10, 1998.[5] Still dissatisfied with the result, Pascual elevated the decision of the OP to the CA by petition for review, but the CA outrightly denied due course to her petition for review because of procedural lapses. The decision of the OP attained finality upon her failure to timely move for the reconsideration of the denial of due course by the CA.

On July 3, 2000, the Regional Executive Director of the DENR issued the writ of execution directing the Community Environment and Natural Resources Officer (CENRO) of Bangui, Ilocos Norte to execute the decision,[6] to wit:

WHEREFORE, pursuant to the provision of Executive Order No. 292 otherwise known as the Revised Administrative Code of 1987, you are hereby ordered to repair to the premises and execute the decision of the Office of the President under O. P. Case No. 5375. In complying therewith, the execution proceeding must be reduced to writing, signed by the parties themselves and their witnesses, so that it may be a basis by this Office to initiate criminal or civil

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[4] *Id*. at 129.

[5] *Id*. at 136-140.

[6] *Id*. at 19-21.

action against any parties who may refuse to obey the Order. You are directed to submit report within 45 days from receipt hereof.

SO ORDERED.[7]

Accordingly, respondent CENRO Josefino L. Daquioag issued a memorandum dated July 19, 2000 directing respondents Land Management Officer III Emilio Doloroso, Special Land Investigator Alberto B. Baguio and Cartographers/DPLI Renato C. Tumamao and Nilo C. Geralde to implement the writ of execution against Pascual,[8] *viz*:

Received from the Office of the OIC, Regional Executive Director, DENR, Region I is the ORDER WRIT OF EXECUTION dated 03 July 2000, relative to the above-cited case, of which on the basis of Executive Order No. 292, you are mandated to execute the Decision of the Office of the President by placing the winning party, Catalina Almazan-Villamor in the premises of the land in question. In the process, you may request the assistance of the Chief Executive of the Municipality of Vintar together with the Philippine National Police (PNP) thereat who will also be a witness to the execution proceedings. Said proceedings must be reduced into writing, signed by the parties themselves and their witnesses, and also taking note of the demeanor of the parties concerned. The report of execution be submitted to this Office not later than August 1, 2000 to allow time for review for its indorsement to the Regional Executive Director.

For strict compliance.[9]

The execution proceedings were carried out on July 27, 2000.

Decision of the RTC

Assailing the issuance of the memorandum and the execution proceedings, Pascual brought a special civil action for *certiorari* with prayer for issuance of writ of injunction in the RTC, docketed as Case No. 12150-13 and assigned to Branch 13.[10] She claimed

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[7] *Id.* at 20-21.

[8] *Id.* at 22.

[9] *Id.*

[10] *Rollo,* pp. 49-62.

in her petition that Daquioag had acted with grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the memorandum to execute the decision "by placing Catalina Almazan-Villamor in possession of the premises in question" because the decision of the Regional Executive Director of the DENR did not authorize or direct such action; that placing Almazan-Villamor in possession of the properties would be tantamount to her being ejected without due process of law; that the CENRO and the Regional Director of the DENR had no power to order her ejectment from the properties, and the execution proceedings conducted were null and void for being done without or in excess of jurisdiction and carried out without notice to her and in her absence; and that she did not sign the execution report for its being in contravention of the writ of execution issued by the Regional Executive Director of the DENR.

On January 15, 2001, respondents Daquioag, Doloroso, Baguio, Tumamao and Ceralde filed their answer with counter-claim and with motion to dismiss,[11] maintaining that the writ of execution dated July 3, 2000 conformed to the provisions of the *Revised Administrative Code of 1987*; that efforts to cause personal service on Pascual had been made but she and her husband had both been out of the country based on the information provided by their neighbors and relatives; that the assailed memorandum had been regularly issued pursuant to the administrative official function of their agency and as the legal consequence of the resolution of the land claims and conflict; that they did not act with grave abuse of discretion because the execution complied with the directive of the Regional Executive Director of the DENR, and the phrase "placing the winning party" found in the memorandum was but the logical interpretation of the decision of said Regional Executive Director.

Almazan-Villamor also filed her answer,[12] asserting that Daquioag did not gravely abuse his discretion in issuing the memorandum because the decision of the OP had implied that

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[11] *Id*. at 91-98.

[12] *Id*. at 99-105.

her possession of the properties be enforced because of her being adjudged the owner; that contrary to Pascual's position, notice to and presence of the losing party were not indispensable for the validity of the execution proceedings because otherwise the implementation of the decision would be left entirely to the will of the losing party who could frustrate and prevent the execution by simply making themselves scarce.

In its decision rendered on November 7, 2002,[13] the RTC dismissed Pascual's petition for *certiorari* for lack of merit, holding that because the ownership of Almazan-Villamor had been recognized with finality, the DENR came under the obligation to place her in possession, occupation and enjoyment of her properties; and that the memorandum issued by Daquioag placing Almazan-Villamor in possession had not been issued in grave abuse of discretion. It observed thusly:

> Definitely, the phrase "by placing the winning party, Catalina Almazan Villamor in the premises of the land in question" appears to be not in accordance with the dispositive portion of the Decision as this is not expressed therein. To the mind of the Court, however, it is not contrary to the decision. In fact, in the ultimate analysis, it is in compliance to (sic) the judgment which restricts the petitioner from entering the premises. It does not matter thereafter if the private respondent would be placed in possession of the land since that would then be the prerogative and function of the DENR as a consequence of its finding that the private respondent is the owner of the properties in question. In other words, the phrase is only objectionable because of how it is worded but the net result would be to give effect to the order requiring the petitioner to refrain from entering the premises especially since petitioner admittedly was then presently occupying the lands in question.
>
> The Court does not therefore agree with the contention of the petitioner that public respondent Josefino L Daquioag acted with grave abuse of discretion amounting to lack or excess of jurisdiction when he issued the Memorandum ordering the placement of Catalina Almazan-Villamor in the premises in question. It is not persuaded that grave abuse of discretion attended the issuance of the assailed

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[13] *Id.* at 129-138.

Memorandum as it cannot discern or see how the phrase "placing the respondent in *possession* of the subject properties" to be in discord with the real intent of the said Decision particularly the dispositive portion thereof. It is to be emphasized that ownership over the subject properties is no longer in issue in this forum as the same had already been settled during the proceedings before the Regional Director and which was affirmed by no less than the Secretary of the DENR and the President of the Republic. x x x[14]

As to Pascual's argument that the memorandum was not validly and properly implemented due to lack of notice to her and because the execution had been conducted in her absence, the RTC noted that she did not controvert the averment of respondents that efforts had been exerted to serve the notice on her on the 21st and 26th of July; that actual service could not be effected on her because she and her husband had been out of the country; and that actual notice to her and her presence during the execution proceedings were validly dispensed with.

Judgment of the CA

Nonetheless, Pascual appealed the decision of the RTC to the CA.[15]

On January 30, 2004, the CA promulgated its judgment,[16] declaring that the memorandum of Daquioag did not go beyond the clear import of the decision of the OP; hence, Daguioag did not act with grave abuse of discretion amounting to lack or excess of jurisdiction. It disposed as follows:

WHEREFORE, the foregoing premises considered, the instant appeal is DENIED. The assailed November 7, 2002 Decision and the January 22, 2003 Order of the Regional Trial Court (RTC) of Laoag City, Branch 13 in Special Civil Action Case No. 12150-13 are AFFIRMED.

SO ORDERED.[17]

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[14] *Id*. at 134-136.

[15] *Id*. at 17.

[16] *Id*. at 40-48.

[17] *Id*. at 48.

Issues

In her appeal, Pascual raises the following issues:

I. THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN AFFIRMING THE DECISION OF THE REGIONAL TRIAL COURT OF LAOAG CITY, BRANCH 13 AND THE ORDER DATED JANUARY 22, 2003 WHICH RULED THAT THE QUESTIONED MEMORANDUM ISSUED BY RESPONDENT HON. JOSEFINO L. DAQUIOAG, CENRO, DENR, BANGUI, ILOCOS NORTE IS VALID.

II. WHETHER OR NOT THE PUBLIC RESPONDENT HAS THE AUTHORITY TO ORDER THE EVICTION/ EJECTION OF THE PETITIONER FROM THE SUBJECT PARCELS OF LAND THROUGH THE QUESTIONED MEMORANDUM WITHOUT DUE PROCESS OF LAW.

In substantiation, Pascual argues that the writ of execution must conform to the judgment to be executed, particularly its dispositive portion; that the phrase ordering her "to refrain from entering the area" found in the dispositive portion of the decision of the Regional Executive Director of the DENR was merely a pronouncement of a prohibition for her to enter, and did not direct that Almazan-Villamor be put in possession of the properties or did not impliedly authorize her eviction from the properties; that the phrase should not be given additional meaning in order to justify the memorandum; that the tenor of the memorandum clearly exceeded the terms and clear import of the dispositive portion, and was a nullity for that reason; that Daquioag had no authority to alter the clear import of the decision in the guise of execution; that the CA erred in upholding the memorandum despite its being in contradiction with the September 7, 1992 decision; that the denial of her free patent application respecting the properties did not necessarily mean that she should now be evicted pursuant to the memorandum issued to enforce the decision; and that the memorandum had the effect of depriving her of her established right of possession without due process of law.

In her comment,[18] Almazan-Villamor countered that the CA rightly sustained the RTC because the memorandum did not conflict with the decision sought to be enforced; that upon her being declared the owner, she became entitled to possess and enjoy the properties to the exclusion of other persons, including Pascual; and that no other interpretation could be made of the dispositive portion of the decision than that the intention was to place her in possession.

Daquioag, *et al.* filed their own comment,[19] stating that the purpose in implementing the decision was to place Almazan-Villamor in possession of the properties in a peaceful manner, and to put on record all the proceedings of the execution process; that the memorandum issued of Daquioag was anchored on the decision itself and on the order of execution issued by the Regional Executive Director of the DENR, and was thus presumed regularly issued in line with his directive and authority as CENR Officer; and that Pascual was using the courts to retain her possession that she had unlawfully seized from Almazan-Villamor.

In her reply,[20] Pascual contended that the September 7, 1992 decision did not declare Almazan-Villamor the owner of the properties; that Almazan-Villamor did not acquire a decree granting her ownership of the properties; that she (Pascual) held the better right to the properties by reason of her having been always in open, continuous and adverse possession following her purchase in the 1960s; and that she continuously paid the realty taxes due on the land.

Did the CA err in sustaining the decision of the RTC to dismiss the petition for *certiorari*?

Ruling

We deny the petition for review on *certiorari*.

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[18] *Id.* at 149-169.

[19] *Id.* at 179-193.

[20] *Id.* at 209-212.

As a general rule, a writ of execution should strictly conform to every particular of the judgment to be executed, and not vary the terms of the judgment it seeks to enforce, nor may it go beyond the terms of the judgment sought to be executed; the execution is void if it is in excess of and beyond the original judgment or award.[21]

Admittedly, the phrase "placing the winning party, Catalina Almazan Villamor in the premises of the land in question" was not expressly stated in the dispositive portion of the decision of the Regional Executive Director of the DENR. But the absence of that phrase did not render the directive to enforce invalid because the directive was in full consonance with the decision sought to be executed. A judgment is not confined to what appears on the face of the decision, for it embraces whatever is necessarily included therein or necessary thereto.[22]

Under the decision of the Regional Executive Director of the DENR, as upheld by the Secretary of the DENR and the OP, the three lots subject of Pascual's free patent application were covered by the *Titulo Propiedad* of Marcos Baria, the predecessor-in-interest of Almazan Villamor. Specifically, the final and executory decision of the OP ruled as follows:

> It is conclusively established that the appellee is the sole living compulsory heir of Marcos Baria, the title holder of the tract of land embracing or covering the lots in question. Evidence on record likewise substantiates sppellee's (sic) claim that she and her predecessor-in-interest have been in possession of the land since a '*Titulo de Propiedad'* was issued to appellee's forebear, Marcos Baria in 1895 up to the present. On the strength of Marcos Baria's Original Certificate of Title duly registered in the Register of Deeds of the Province of Ilocos Norte, the appellee and her predecessors were the ones who enjoyed exclusive and peaceful possession of the land, declared the same for taxation purposes,

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[21] *Tumibay v. Soro*, G.R. No. 152016, April 13, 2010, 618 SCRA 169, 175-176.

[22] *Jaban v. Court of Appeals*, G.R. No. 129660, November 22, 2001, 370 SCRA 221, 228.

paid the corresponding real estate taxes and reaped the fruits derived from the land.

x x x x x x x x x

In synthesis, the appellee, derives her claim from the title *'Titulo de Propiedad'* of her late [great] grandfather issued on June 14, 1895 which she inherited by operation of law, whereas, the appellant anchors his claim on the alleged deeds of sale executed in 1983 by third persons not related nor privy to appellee, covering the lots in question which are portions of the titled property one of which deeds of sale is even inexistent.

The above evidences preponderate in favor of appellee, not only in point of time but on the basis of their nature as a(sic) truthfulness and validity. The alleged deeds of sale executed in 1983 in favor of appellant by persons who have no known valid claim to the lots involved, which could not all be presented during the investigation, should pale in comparison to the Original Certificate of Title (*Titulo de Propiedad*) acquired by appellee's predecessor-in-interest eighty-eight (88) years earlier which has remained undisposed and unencumbered up to the present. This is specially so when appellee's claim of ownership is amply substantiated by credible and competent witnesses, Ambrosio and Angelito Malasig whose sworn statements offered in evidence were not disputed by the appellant despite ample opportunity to do so.[23]

The denial of Pascual's free patent application was based on the recognition of Almazan Villamor's ownership of the subject properties. The consequence of the denial was the directive for Pascual to refrain from entering the property, and from possessing the subject property declared to be owned by Almazan Villamor. Upon the final finding of the ownership in the judgment in favor of Almazan Villamor, the delivery of the possession of the property was deemed included in the decision, considering that the claim itself of Pascual to the possession had been based also on ownership.[24]

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[23] *Rollo*, pp. 118-119.

[24] *De Leon v. Public Estates Authority*, G.R. No. 181970, August 3, 2010, 626 SCRA 547, 560.

Possession is an essential attribute of ownership.[25] Whoever owns the property has the right to possess it.[26] Adjudication of ownership includes the delivery of possession if the defeated party has not shown any right to possess the land independently of her rejected claim of ownership.[27] In *Nazareno v. Court of Appeals*,[28] the Court affirmed the writ of execution awarding possession of land, notwithstanding that the decision sought to be executed did not direct the delivery of the possession of the land to the winning parties. Citing *Perez v. Evite*,[29] the Court stated that:

> A case in point is *Perez v. Evite* wherein the lower court declared Evite as owner of the disputed land. When the judgment became final and executory, Evite moved for the issuance of a writ of execution which the trial court granted. Perez moved to quash the writ arguing that the writ was at variance with the decision as the decision sought to be executed merely declared Evite owner of the property and did not order its delivery to him. Perez argued citing the cases of *Jabon v. Alo* and *Talens v. Garcia* which held that adjudication of ownership of the land did not include possession thereof. In resolving in favor of Evite this Court held —
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> x x x Considering that herein plaintiff-appellants have no other claim to possession of the property apart from their claim of ownership which was rejected by the lower court and, consequently, has no right to remain thereon after such ownership was adjudged to defendant-appellees, the delivery of possession of the land should be considered included in the decision. Indeed, it would be defeating the ends of justice should we require that for herein appellees to obtain possession of the property duly adjudged to be theirs, from those who have no right to remain therein, they must submit to court litigations anew.[30]

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[25] *Gaitero v. Almeria*, G.R. No. 181812, June 8, 2011, 651 SCRA 544, 548.

[26] *Id*.

[27] *Supra* note 23.

[28] G.R. No. 131641, February 23, 2000, 326 SCRA 338.

[29] No. L-16003, March 29, 1961, 1 SCRA 953.

[30] *Id*. at 343-344.

Accordingly, Daquioag's memorandum placing Almazan-Villamor in possession of the properties was not inconsistent with the decision of the Regional Executive Director of the DENR, as affirmed by the OP. With the clear recognition of Almazan-Villamor's ownership, and in default of any credible showing by Pascual of any valid justification for her to continue in possession of the properties despite the denial of her free patent application, possession must be restored to Almazan-Villamor as the rightful owner and possessor of the properties.

Hence, Daquioag's assailed memorandum could not be disparaged as having been issued with grave abuse of discretion amounting to lack or in excess of jurisdiction. The RTC correctly held that placing Almazan-Villamor in possession of the properties was necessary to give effect to the order requiring Pascual to refrain from entering the premises. We quote with approval the pertinent portion of the RTC's decision on this point:

> The claim of ownership by the herein petitioner had been rejected as in fact she was ordered to refrain from entering the premises. On the other hand, the application of the respondent was given due course and she was even advised to file her application for registration of title over the subject properties. This, to the mind of the Court, is tantamount to a recognition of her rightful ownership over the same which carries with it the right to possess and to enjoy her property. There can be no other interpretation as regard the dispositive portion of the Decision than to eventually place the respondent in possession of the same, her ownership over the same having already been upheld. While the Decision required her to file her application for free patent, it was not purposely for the acquisition of ownership as she had already found to be the owner of the lands. The eventual issuance of the certificate of title (free patent) would only affirm such ownership.[31]

Finally, we also conclude that the CA rightly sustained the RTC's dismissal of Pascual's petition for *certiorari* because of the impropriety of her chosen remedy. A special civil action for *certiorari* is the proper action to bring when a tribunal,

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[31] *Rollo*, p. 136.

board or officer exercising judicial or quasi-judicial function has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law.[32] The exercise of judicial function consists in the power to determine what the law is and what the legal rights of the parties are, and then to adjudicate upon the rights of the parties.[33] The term quasi-judicial function applies to the action and discretion of public administrative officers or bodies that are required to investigate facts or to ascertain the existence of facts, hold hearings, and draw conclusions from them as a basis for their official action and to exercise discretion of a judicial nature.[34] However, the issuance by Daquioag of the assailed memorandum implementing the writ of execution did not derive from the performance of a judicial or quasi-judicial function. He was not thereby called upon to adjudicate the rights of the contending parties or to exercise any discretion of a judicial nature, but only performing an administrative duty of enforcing and implementing the writ.

WHEREFORE, the Court **DENIES** the petition for review on *certiorari* for its lack of merit; **AFFIRMS** the decision promulgated on January 30, 2004; and **ORDERS** the petitioner to pay the costs of suit.

SO ORDERED.

Sereno, C.J., Leonardo-de Castro, Villarama, Jr., and *Reyes, JJ.,* concur.

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[32] *Philippine National Bank v. Perez*, G.R. No. 187640 & G.R. No. 187687, June 15, 2011, 652 SCRA 317, 331.

[33] *Ongsuco v. Malones*, G.R. No. 182065, October 27, 2009, 604 SCRA 499, 516.

[34] *Id.*

FIRST DIVISION

[G.R. No. 162205. March 31, 2014]

REVELINA LIMSON, *petitioner, vs.* **EUGENIO JUAN GONZALEZ,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; ISSUES OF FACT MAY NOT BE RAISED IN A RULE 45 PETITION.— To start with, the petition for review of Limson projects issues of fact. It urges the Court to undo the findings of fact of the OCP, the Secretary of Justice and the CA on the basis of the documents submitted with her petition. But the Court is not a trier of facts, and cannot analyze and weigh evidence. Indeed, Section 1 of Rule 45, *Rules of Court* explicitly requires the petition for review on *certiorari* to raise only questions of law, which must be distinctly set forth. Accordingly, the petition for review of Limson is outrightly rejected for this reason.

2. CRIMINAL LAW; ANTI-*ALIAS* LAW (C.A. 142, AS AMENDED BY R.A. 6085); WHERE THE USE OF MANY *ALIASES* DOES NOT CONSTITUTE VIOLATION OF THE ANTI-*ALIAS* LAW.— [O]n the issue of the alleged use of illegal *aliases*, the Court observes that respondent's *aliases* involved the names "Eugenio Gonzalez", "Eugenio Gonzales", "Eugenio Juan Gonzalez", "Eugenio Juan Gonzalez *y* Regalado", "Eugenio C.R. Gonzalez", "Eugenio J. Gonzalez", and – per Limson – "Eugenio Juan Robles Gonzalez." But these names contained his true names, albeit at times joined with an erroneous middle or second name, or a misspelled family name in one instance. The records disclose that the erroneous middle or second names, or the misspelling of the family name resulted from error or inadvertence left unchecked and unrectified over time. What is significant, however, is that such names were not fictitious names within the purview of the Anti-*Alias* Law; and that such names were not different from each other. Considering that he was not also shown to have used the names for unscrupulous purposes, or to deceive or confuse the public, the dismissal of the charge against him was justified in fact and in law.

3. ID.; ID.; *ALIAS*, DEFINED AND EXPLAINED.— An *alias* is a name or names used by a person or intended to be used by him publicly and habitually, usually in business transactions, in addition to the real name by which he was registered at birth or baptized the first time, or to the substitute name authorized by a competent authority; a man's name is simply the sound or sounds by which he is commonly designated by his fellows and by which they distinguish him, but sometimes a man is known by several different names and these are known as *aliases.* An *alias* is thus a name that is different from the individual's true name, and does not refer to a name that is not different from his true name.

APPEARANCES OF COUNSEL

Bantog and Andaya Law Offices for petitioner.
Guevarra Law Office for respondent.

D E C I S I O N

BERSAMIN, *J.*:

Under review is the decision promulgated on July 31, 2003,[1] whereby the Court of Appeals dismissed petitioner Revelina Limson's petition for *certiorari* assailing the denial by the Secretary of Justice of her petition for review *vis-à-vis* the adverse resolutions of the Office of the City Prosecutor of Mandaluyong City (OCP) of her charges for falsification and illegal use of *aliases* against respondent Eugenio Juan Gonzalez.

Antecedents

The antecedents as found by the CA are as follows:

On or about December 1, 1997, Limson filed a criminal charge against Gonzalez for falsification, before the Prosecutor's Office of Mandaluyong City.

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[1] *Rollo*, pp. 74-91; penned by Associate Justice Reyes (now a Member of this Court), with the concurrence of Associate Justice Salvador J. Valdez, Jr. (retired/deceased) and Associate Justice Danilo B. Pine (retired)

The charge for [sic] falsification of [sic] Limson is based on Limson's assertion that in the records of the Professional Regulatory Commission (PRC), a certain 'EUGENIO GONZALEZ' is registered as an architect and that Gonzalez, who uses, among others, the name 'EUGENIO JUAN GONZALEZ', and who pretends to be said architect. Registered [sic] with the PRC, is an impostor and therefore, guilty [sic] of falsification x x x."

Gonzalez filed his Counter-Affidavit, wherein he explained in detail that his full name is EUGENIO (first given name) JUAN (second given name) GONZALEZ (father's family name) *y* REGALADO (mother's family name). He alleges that in his youth, while he was still in grade school and high school, he used the name EUGENIO GONZALEZ *y* REGALADO and/or EUGENIO GONZALEZ and that thereafter, he transferred to the University of Santo Tomas and therein took up architecture and that upon commencement of his professional practice in 1943, he made use of his second name, JUAN. Consequently, in his professional practice, he has identified himself as much as possible as Arch. Eugenio Juan Gonzalez, because the surname GONZALEZ was and is still, a very common surname throughout the Philippines and he wanted to distinguish himself with his second given name, JUAN, after his first given name, EUGENIO. Gonzalez supposed [sic] his allegations with various supporting documents x x x.

After receiving pertinent Affidavits and evidentiary documents from Limson and Gonzalez, respectively, the Prosecutor dismissed the criminal charge against Gonzalez, finding that indeed EUGENIO JUAN R. GONZALES [sic] is the architect registered in the PRC. Said Resolution was issued on March 30, 1998 x x x.

Limson elevated the Resolution of the Prosecutor x x x to the Secretary of Justice. Before the Secretary of Justice, she utilized the basic arguments she had raised before the Prosecutor's Office, with slight variations, in assailing said adverse Resolution of the Prosecutor.

After Opposition by Gonzalez, the Secretary of Justice dismissed the appeal of Limson. The Secretary of Justice affirmed and even expanded the findings of the Prosecutor x x x.

Not content with said Resolution of the Secretary of Justice, Limson filed a motion for reconsideration therefrom; which, after Opposition

by Gonzalez, was dismissed by the Secretary of Justice, on September 15, 2000 x x x. Said dismissal was with finality.

Notwithstanding the foregoing, on or about September 25, 2000, Limson filed a new letter complaint against Gonzalez, with the Secretary of Justice. She alleged the same basic facts, evidence, and charges, as already resolved by the Prosecutor and affirmed with finality, by the Secretary of Justice; but adding the accusation that because Gonzalez used various combinations of his name, in different signature, on the [sic] different occasions, Gonzalez had also violated Republic Act No. 6085 (the Anti-*Alias* Law). Limson, in said letter complaint of September 25, 2000, suppressed from the Secretary of Justice, the extant before-mentioned Resolutions, already decreed and adverse to her.

The Secretary of Justice referred this letter complaint of Limson x x x to the Prosecutor's Office of Mandaluyong City for investigation.

This new investigation was docketed as I.S. No. 01-44001-B and assigned to Honorable Susante J. Tobias x x x.

After submission of Affidavits, Counter-Affidavits and other pertinent pleadings, and evidences [sic], by the respective parties, before the Prosecutor, the Prosecutor rendered a Resolution, dismissing the new complaint x x x which Resolution reads as follows:

> 'After a careful evaluation of the letter complaint of Revelina Limson dated September 25, 2000 addressed to the Secretary of Justice and endorsed to this Office x x x and the evidence adduced by the contending parties, we find the issues raised in the aforesaid letter to be a rehashed (sic) of a previous complaint filed by the same complainant which has already been long resolved with finality by this Office and the Department of Justice more particularly under I.S. No. 97-11929.
>
> WHEREFORE, it is most respectfully recommended that the instant case be considered closed and dismissed.'

Not content with said Resolution x x x, Limson filed a motion for reconsideration; [sic]which was again opposed by Gonzalez and which was denied by the Prosecutor x x x.

Not agreeable to said Resolution x x x, Limson filed a Petition for Review with the Secretary of Justice x x x, to which x x x Gonzalez filed an Answer/Opposition x x x.

The Secretary of Justice denied said Petition for Review of Limson, on April 3, 2002 x x x as follows:

> 'Section 12, in relation to Section 7, of Department Circular No. 70 dated July 3, 2000, provides that the Secretary of Justice may, *motu propio* (sic), dismiss outright the petition if there is no showing of any reversible error in the assailed resolution or when issued [sic] raised therein are too unsubstantial to require consideration. We carefully examined the petition and its attachments and we found no such error committed by the prosecutor that would justify the reversal of the assailed resolution which is in accord with the evidence and law on the matter.
>
> Moreover, there was no showing that a copy of the petition was furnished the Prosecution Office concerned pursuant to Section 5 of said Department Circular.[2]

Although Limson sought the reconsideration of the adverse resolution of April 3, 2002, the Secretary of Justice denied her motion for reconsideration on October 15, 2002.

Decision of the CA

Limson assailed on *certiorari* the adverse resolutions of the Secretary of Justice in the CA, claiming that the Secretary of Justice had thereby committed grave abuse of discretion amounting to lack or excess of jurisdiction for misappreciating her evidence establishing her charges of falsification and violation of the Anti-*Alias* Law against respondent.

On July 31, 2003, the CA promulgated its assailed decision dismissing the petition for *certiorari*, disposing as follows:

> WHEREFORE, in light of the foregoing discussions, the instant Petition is perforce ***DENIED***. Accordingly, the Resolutions subject of this petition are ***AFFIRMED***.
>
> SO ORDERED.[3]

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[2] *Id*. at 75-78.

[3] *Id*. at 91.

On January 30, 2004, the CA denied Limson's motion for reconsideration.

Issues

In her petition for review, Limson avers the following errors, namely:

I

THE FINDINGS OF FACT OF THE HONORABLE COURT OF APPEALS DO NOT CONFORM TO THE EVIDENCE ON RECORD. MOREOVER, THERE WAS A MISAPPRECIATION AND/OR MISAPPREHENSION OF FACTS AND THE HONORABLE COURT FAILED TO NOTICE CERTAIN RELEVANT POINTS WHICH IF CONSIDERED WOULD JUSTIFY A DIFFERENT CONCLUSION

II

THE CONCLUSION OF THE COURT OF APPEALS IS A FINDING BASED ON SPECULATION AND/OR SURMISE AND THE INFERENCES MADE WERE MANIFESTLY MISTAKEN.[4]

Limson insists that the names "Eugenio Gonzalez" and "Eugenio Juan Gonzalez *y* Regalado" did not refer to one and the same individual; and that respondent was not a registered architect contrary to his claim. According to her, there were material discrepancies between the graduation photograph of respondent taken in 1941 when he earned his degree in Architecture from the University of Sto. Tomas, Manila,[5] and another photograph of him taken for his driver's license in 1996,[6] arguing that the person in the latter photograph was not the same individual depicted in the 1941 photograph. She submits documents showing that respondent used *aliases* from birth, and passed himself off as such persons when in fact he was not. She prays that the decision of the CA be set aside, and that the proper criminal cases for falsification of public document and illegal use of *alias* be filed against respondent

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[4] *Id*. at 50.

[5] *Id*. at 123 (Annex "O" of the Petition).

[6] *Id.* (Annex "P" of the Petition).

In his comment,[7] respondent counters that the petition for review should be denied due course for presenting only factual issues; that the factual findings of the OCP, the Secretary of Justice, and the CA should remain undisturbed; that he did not commit any falsification; that he did not use any *aliases*; that his use of conflicting names was the product of erroneous entry, inadvertence, and innocent mistake on the part of other people; that Limson was motivated by malice and ill will, and her charges were the product of prevarication; and that he was a distinguished architect and a respected member of the community and society.

Ruling of the Court

The appeal has no merit.

To start with, the petition for review of Limson projects issues of fact. It urges the Court to undo the findings of fact of the OCP, the Secretary of Justice and the CA on the basis of the documents submitted with her petition. But the Court is not a trier of facts, and cannot analyze and weigh evidence. Indeed, Section 1 of Rule 45, *Rules of Court* explicitly requires the petition for review on *certiorari* to raise only questions of law, which must be distinctly set forth. Accordingly, the petition for review of Limson is outrightly rejected for this reason.

Secondly, Limson appears to stress that the CA erred in concluding that the Secretary of Justice did not commit grave abuse of discretion in the appreciation of the evidence submitted to the OCP. She would now have us reverse the CA.

We cannot reverse the CA. We find that the conclusion of the CA about the Secretary of Justice not committing grave abuse of discretion was fully warranted. Based on the antecedents earlier rendered here, Limson did not persuasively demonstrate to the CA how the Secretary of Justice had been gravely wrong in upholding the dismissal by the OCP of her charges against respondent. In contrast, the assailed resolutions of the Secretary of Justice were quite exhaustive in their exposition of the reasons

[7] *Id.* at 158-208.

for the dismissal of the charges. And, even assuming that the Secretary of Justice thereby erred, she should have shown to the CA that either arbitrariness or capriciousness or whimsicality had tainted the error. Yet, she tendered no such showing. She should be reminded, indeed, that grave abuse of discretion meant either that the judicial or quasi-judicial power was exercised by the Secretary of Justice in an arbitrary or despotic manner by reason of passion or personal hostility, or that the Secretary of Justice evaded a positive duty, or virtually refused to perform the duty enjoined or to act in contemplation of law, such as when the Secretary of Justice, while exercising judicial or quasi-judicial powers, acted in a capricious or whimsical manner as to be equivalent to lack of jurisdiction.[8]

Thirdly, the discrepancy between photographs supposedly taken in 1941 and in 1996 of respondent did not support Limson's allegation of grave abuse of discretion on the part of the Secretary of Justice. It is really absurd to expect respondent, the individual depicted on the photographs, to look the same after 55 long years.

And, fourthly, on the issue of the alleged use of illegal *aliases*, the Court observes that respondent's *aliases* involved the names "Eugenio Gonzalez", "Eugenio Gonzales", "Eugenio Juan Gonzalez", "Eugenio Juan Gonzalez *y* Regalado", "Eugenio C.R. Gonzalez", "Eugenio J. Gonzalez", and – per Limson – "Eugenio Juan Robles Gonzalez." But these names contained his true names, albeit at times joined with an erroneous middle or second name, or a misspelled family name in one instance. The records disclose that the erroneous middle or second names, or the misspelling of the family name resulted from error or inadvertence left unchecked and unrectified over time. What is significant, however, is that such names were not fictitious names within the purview of the Anti-*Alias* Law; and that such names were not different from each other. Considering that he was not also shown to have used the names for unscrupulous purposes, or to deceive

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[8] *De los Santos v. Metropolitan Bank and Trust Company*, G.R. No. 153852, October 24, 2012, 684 SCRA 410, 422-423.

or confuse the public, the dismissal of the charge against him was justified in fact and in law.

An *alias* is a name or names used by a person or intended to be used by him publicly and habitually, usually in business transactions, in addition to the real name by which he was registered at birth or baptized the first time, or to the substitute name authorized by a competent authority; a man's name is simply the sound or sounds by which he is commonly designated by his fellows and by which they distinguish him, but sometimes a man is known by several different names and these are known as *aliases*.[9] An *alias* is thus a name that is different from the individual's true name, and does not refer to a name that is not different from his true name.

In *Ursua v. Court of Appeals*,[10] the Court tendered an enlightening discourse on the history and objective of our law on *aliases* that is worth including here, *viz*:

> Time and again we have decreed that statutes are to be construed in the light of the purposes to be achieved and the evils sought to be remedied. Thus in construing a statute the reason for its enactment should be kept in mind and the statute should be construed with reference to the intended scope and purpose. The court may consider the spirit and reason of the statute, where a literal meaning would lead to absurdity, contradiction, injustice, or would defeat the clear purpose of the lawmakers.
>
> For a clear understanding of the purpose of C.A. No. 142 as amended, which was allegedly violated by petitioner, and the surrounding circumstances under which the law was enacted, the pertinent provisions thereof, its amendments and related statutes are herein cited. C.A. No.142, which was approved on 7 November 1936, and before its amendment by R. A. No. 6085, is entitled An Act to Regulate the Use of *Aliases*. It provides as follows:
>
> > Section 1. Except as a pseudonym for literary purposes, no person shall use any name different from the one with which

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[9] *Ursua v. Court of Appeals*, G.R. No. 112170, April 10, 1996, 256 SCRA 147, 155.

[10] *Id.* at 163-166.

he was christened or by which he has been known since his childhood, or such substitute name as may have been authorized by a competent court. The name shall comprise the patronymic name and one or two surnames.

Section 2. Any person desiring to use an *alias* or *aliases* shall apply for authority therefor in proceedings like those legally provided to obtain judicial authority for a change of name. Separate proceedings shall be had for each *alias*, and each new petition shall set forth the original name and the *alias* or *aliases* for the use of which judicial authority has been obtained, specifying the proceedings and the date on which such authority was granted. Judicial authorities for the use of *aliases* shall be recorded in the proper civil register x x x.

The above law was subsequently amended by R.A. No. 6085, approved on 4 August 1969. As amended, C.A. No. 142 now reads:

Section 1. Except as a pseudonym solely for literary, cinema, television, radio or other entertainment purposes and in athletic events where the use of pseudonym is a normally accepted practice, no person shall use any name different from the one with which he was registered at birth in the office of the local civil registry or with which he was baptized for the first time, or in case of an alien, with which he was registered in the bureau of immigration upon entry; or such substitute name as may have been authorized by a competent court: Provided, That persons whose births have not been registered in any local civil registry and who have not been baptized, have one year from the approval of this act within which to register their names in the civil registry of their residence. The name shall comprise the patronymic name and one or two surnames.

Sec. 2. Any person desiring to use an *alias* shall apply for authority therefor in proceedings like those legally provided to obtain judicial authority for a change of name and no person shall be allowed to secure such judicial authority for more than one *alias*. The petition for an *alias* shall set forth the person's baptismal and family name and the name recorded in the civil registry, if different, his immigrant's name, if an alien, and his pseudonym, if he has such names other than his original or real name, specifying the reason or reasons for the desired *alias*. The judicial authority for the use of *alias*, the Christian name and the alien immigrant's name shall be

recorded in the proper local civil registry, and no person shall use any name or names other than his original or real name unless the same is or are duly recorded in the proper local civil registry.

The objective and purpose of C.A. No. 142 have their origin and basis in Act No. 3883, An Act to Regulate the Use in Business Transactions of Names other than True Names, Prescribing the Duties of the Director of the Bureau of Commerce And Industry in its Enforcement, Providing Penalties for Violations thereof, and for other purposes, which was approved on 14 November 1931 and amended by Act No. 4147, approved on 28 November 1934. The pertinent provisions of Act No. 3883 as amended follow – Section 1. It shall be unlawful for any person to use or sign, on any written or printed receipt including receipt for tax or business or any written or printed contract not verified by a notary public or on any written or printed evidence of any agreement or business transactions, any name used in connection with his business other than his true name, or keep conspicuously exhibited in plain view in or at the place where his business is conducted, if he is engaged in a business, any sign announcing a firm name or business name or style without first registering such other name, or such firm name, or business name or style in the Bureau of Commerce together with his true name and that of any other person having a joint or common interest with him in such contract agreement, business transaction, or business x x x.

For a bit of history, the enactment of C.A. No. 142 as amended was made primarily to curb the common practice among the Chinese of adopting scores of <u>different</u> names and *aliases* which created tremendous confusion in the field of trade. Such a practice almost bordered on the crime of using <u>fictitious</u> names which for obvious reasons could not be successfully maintained against the Chinese who, rightly or wrongly, claimed they possessed a thousand and one names. C.A. No. 142 thus penalized the act of using an *alias* name, unless such *alias* was duly authorized by proper judicial proceedings and recorded in the civil register.

In *Yu Kheng Chiau v. Republic* the Court had occasion to explain the meaning, concept and ill effects of the use of an *alias* within the purview of C.A. No. 142 when we ruled –

There can hardly be any doubt that petitioner's use of *alias* 'Kheng Chiau Young' in addition to his real name 'Yu Cheng

> Chiau' would add to more confusion. That he is known in his business, as manager of the Robert Reid, Inc., by the former name, is not sufficient reason to allow him its use. After all, petitioner admitted that he is known to his associates by both names. In fact, the Anselmo Trinidad, Inc., of which he is a customer, knows him by his real name. Neither would the fact that he had encountered certain difficulties in his transactions with government offices which required him to explain why he bore two names, justify the grant of his petition, for petitioner could easily avoid said difficulties by simply using and sticking only to his real name 'Yu Cheng Chiau.'
>
> The fact that petitioner intends to reside permanently in the Philippines, as shown by his having filed a petition for naturalization in Branch V of the abovementioned court, argues the more against the grant of his petition, because if naturalized as a Filipino citizen, there would then be no necessity for his further using said *alias*, as it would be contrary to the usual Filipino way and practice of using only one name in ordinary as well as business transactions. And, as the lower court correctly observed, if he believes (after he is naturalized) that it would be better for him to write his name following the Occidental method, 'he can easily file a petition for change of name, so that in lieu of the name 'Yu Kheng Chian,' he can, abandoning the same, ask for authority to adopt the name 'Kheng Chiau Young.' (Emphasis and underscoring supplied)

WHEREFORE, the Court **DENIES** the petition for review on *certiorari*; **AFFIRMS** the decision promulgated on July 31, 2003; and **ORDERS** petitioner to pay the costs of suit.

SO ORDERED.

Sereno, C.J., Leonardo-de Castro, del Castillo,[*] and *Villarama, Jr., JJ.,* concur.

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[*] Vice Associate Justice Bienvenido L. Reyes, who penned the decision under review, pursuant to the raffle of May 8, 2013.

SECOND DIVISION

[G.R. No. 191727. March 31, 2014]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **MANUEL APLAT *y* SUBLINO and JACKSON DANGLAY *y* BOTIL,** *accused,* **MANUEL APLAT *y* SUBLINO,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; THE ALLEGED INCONSISTENCIES IN THE TESTIMONIES OF PROSECUTION WITNESSES ARE INSUFFICIENT TO DIMINISH THEIR CREDIBILITY.— The Court, however, finds that the CA correctly agreed with the appellee that the perceived inconsistencies in the testimonies of the prosecution witnesses are insufficient to diminish their credibility. Indeed, the inconsistencies alluded to by the appellant refer merely to minor details and collateral matters that do not in any way affect the material points of the crime charged. As held in *People v. Castro*, "[i]nconsistencies on minor details and collateral matters do not affect the substance of their declaration, their veracity or the weight of their testimonies." "It is perfectly natural for different witnesses testifying on the occurrence of a crime to give varying details as there may be some details which one witness may notice while the other may not observe or remember."

2. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. 9165); ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS, ESTABLISHED IN CASE AT BAR.— "In prosecutions for illegal sale of dangerous drugs, the following must be proven: (1) that the transaction or sale took place; (2) the *corpus delicti* or the illicit drug was presented as evidence; and (3) that the buyer and seller were identified." "The commission of the offense of illegal sale of dangerous drugs requires merely the consummation of the selling transaction, which happens the moment the buyer receives the drug from the seller. Settled is the rule that as long as the police officer went through the operation as a buyer

and his offer was accepted by appellant and the dangerous drugs delivered to the former, the crime is considered consummated by the delivery of the goods. In this case, the prosecution was able to establish that a sale of one brick of marijuana for ₱1,500.00 took place between PO3 Fines, as buyer, and appellant as seller. The brick of marijuana was presented before the trial court as Exhibit "O." PO3 Fines positively identified appellant as the seller. It is, therefore, beyond doubt that a buy-bust operation involving the illegal sale of marijuana, a dangerous drug, actually took place.

3. ID.; ID.; ID.; BUY-BUST OPERATION, REGULARLY CONDUCTED.— [S]uch buy-bust operation, in the absence of any evidence to the contrary and based on the facts obtaining in this case, was regularly carried out by the police operatives. "A buy-bust operation is a form of entrapment whereby ways and means are resorted to for the purpose of trapping and capturing the lawbreakers in the execution of their criminal plan." In this regard, police authorities are given a wide discretion in the selection of effective means to apprehend drug dealers and the Court is hesitant to establish on *a priori* basis what detailed acts they might credibly undertake in their entrapment operations for there is no prescribed method on how the operation is to be conducted. As ruled in *People v. Salazar*, a buy-bust operation deserves judicial sanction as long as it is carried out with due regard to constitutional and legal safeguards, such as in this case.

4. ID.; ID.; ID.; POLICE OFFICERS' ALLEGED NON-COMPLIANCE WITH SECTION 21, ARTICLE II OF R.A. 9165 WAS RAISED FOR THE FIRST TIME ON APPEAL, HENCE, CANNOT BE ENTERTAINED.— [I]t must be stressed that appellant raised the police operatives' alleged non-compliance with Section 21 of RA 9165 for the first time on appeal. We have painstakingly scrutinized the transcripts of stenographic notes in this case and found no instance wherein appellant at the very least intimated during trial that there were lapses in the safekeeping of the seized item which affected its integrity and evidentiary value. Neither did he try to show that doubts were cast thereon. Such belated attempt on the part of appellant to raise this issue at this point in time can no longer be entertained. Following our ruling in *People v. Sta. Maria*, several subsequent cases teem with pronouncement

that objection to evidence cannot be raised for the first time on appeal; when a party desires the court to reject the evidence offered, he must so state in the form of objection. Without such objection, he cannot raise the question for the first time on appeal. The above ruling finds proper application in the present case.

5. ID.; ID.; ID.; INVENTORY AND MARKING OF THE CONFISCATED ITEMS MAY BE DONE IN THE OFFICE OF THE APPREHENDING TEAM.— [T]he fact that the inventory and marking of the subject item were not made onsite is of no moment and will not lead to appellant's exoneration. From a cursory reading of Section 21(a) of the Implementing Rules and Regulations of RA 9165, it can be gleaned that in cases of warrantless seizures, as in this case, inventory and marking of the seized item can be conducted at the nearest police station or office of the apprehending authorities, whichever is practicable, and not necessarily at the place of seizure. As held in *People v. Resurreccion*, "marking upon immediate confiscation" does not exclude the possibility that marking can be done at the police station or office of the apprehending team. Thus, in the present case, the apprehending team cannot be faulted if the inventory and marking were done at their office where appellant was immediately brought for custody and further investigation.

6. ID.; ID.; ID.; CHAIN OF CUSTODY OBSERVED IN CASE AT BAR; INTEGRITY AND EVIDENCIARY VALUE OF THE ITEMS, PROPERLY PRESERVED.— "[T]he integrity of the evidence is presumed to have been preserved unless there is a showing of bad faith, ill will or proof that the evidence has been tampered with." Notably here, appellant, upon whom the burden of proving that the inventory and marking of the item was not done in his presence, failed to overcome such presumption. While he admitted that there was an inventory, appellant insists that he does not remember if he was present when the same was made. But the photographs taken during the inventory before the representative of the DOJ, media and a *barangay* official belie appellant's protestation. It bears stressing that the Court has already held in numerous cases that non-compliance with Section 21, Article II of RA 9165 is not fatal and will not render an accused's arrest illegal or the items seized/confiscated from him inadmissible. What is

of utmost importance is that the integrity and the evidentiary value of the seized items was properly preserved and safeguarded through an unbroken chain of custody, as further illustrated below. To wrap up, the totality of the evidence adduced by the prosecution, both testimonial and documentary, clearly shows an unbroken chain of custody[.]

7. ID.; ID.; ID.; PROPER PENALTY FOR ILLEGAL SALE OF DANGEROUS DRUGS IS LIFE IMPRISONMENT AND A FINE OF P500,000.00.— Appellant sold and delivered a brick of marijuana, a dangerous drug, weighing 931.4 grams. Under Section 5, Article II of RA 9165, the sale of dangerous drug, regardless of its quantity and purity, is punishable by life imprisonment to death and a fine of ₱500,000.00 to ₱10 million. With the advent of RA 9346 the penalty of death cannot, however, be imposed and consequently, appellant has to be meted only the penalties of life imprisonment and payment of fine. Hence, the Court sustains the penalties of life imprisonment and payment of fine of ₱500,000.00 imposed by the RTC upon appellant, as affirmed by the CA, for being in accordance with law.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

D E C I S I O N

DEL CASTILLO, *J.*:

This is an appeal from the November 27, 2009 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 03156 which affirmed the November 5, 2007 Decision[2] of the Regional Trial Court (RTC), Branch 61, Baguio City, finding appellant

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[1] CA *rollo*, pp. 177-202; penned by Associate Justice Hakim S. Abdulwahid and concurred in by Associate Justices Sesinando E. Villon and Michael P. Elbinias.

[2] Records, pp. 294-302; penned by Judge Antonio C. Reyes; see also the RTC Order dated November 14, 2007, *id.* at 303-304.

Manuel Aplat *y* Sublino (appellant) and his co-accused Jackson Danglay *y* Botil (Danglay) guilty of violating Section 5, Article II of Republic Act (RA) No. 9165 or the Comprehensive Dangerous Drugs Act of 2002 in Criminal Case No. 26080-R and thereby sentencing each of them to suffer the penalties of life imprisonment and to pay a fine of ₱500,000.00.

Factual Antecedents

In an Information[3] dated April 19, 2006, appellant and Danglay were charged with Violation of Section 5, Article II of RA 9165, the pertinent portion of which reads:

> That on or about the 12th day of April 2006, in the City of Baguio, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually aiding one another, did then and there willfully, unlawfully and feloniously sell and deliver one (1) brick of dried marijuana leaves with fruiting tops wrapped in a newspaper weighing 950 grams, more or less, for [₱]1,500.00 to PO3 PHILIP R. FINES, a bonafide member of the Drug Enforcement Unit of the Baguio City Police Office, who acted as poseur-buyer, knowing fully well that said drug is a dangerous drug and that the sale and delivery of such drug is prohibited without authority of law to do so, in violation of the aforementioned provision of law.
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> CONTRARY TO LAW.

Appellant and Danglay pleaded not guilty to the charge upon their separate arraignment held on September 14, 2006 and June 22, 2006, respectively.

Version of the Prosecution

The prosecution presents its version of the facts in the following manner:

At around 3:00 p.m. of April 12, 2006, SPO4 Edelfonso L. Sison (SPO4 Sison), while on duty at the Baguio City Police Office Drug Enforcement Section,[4] received information from

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[3] *Id*. at 1.

[4] Now known as the City Anti-Illegal Drugs Special Operation Task Force.

a civilian informant that his acquaintance named "Manuel" was looking for a prospective buyer of dried marijuana leaves. Forthwith, SPO4 Sison instructed the informant to get in touch with Manuel and accept the latter's offer. The informant acceded and shortly thereafter returned to tell SPO4 Sison that Manuel accepted the offer to buy and that the sale would take place between 4:30 to 5:00 p.m. of the same day in front of JR Bakery along Kayang corner Hilltop Streets, Baguio City.

SPO4 Sison immediately relayed the information to his superior, Police Senior Inspector Damian Dulnuan Olsim (P/Sr. Insp. Olsim), who, acting on the same, organized a buy-bust team for Manuel's entrapment. The team was composed of SPO4 Sison as team leader, PO3 Philip R. Fines (PO3 Fines) as poseur-buyer, with PO3 Robert Sagmayao (PO3 Sagmayao) and PO2 Roy C. Mateo (PO2 Mateo) as back-ups. PO3 Fines was provided with one ₱1,000.00 bill and one ₱500.00 bill as buy-bust money.[5] He photocopied the bills and had them authenticated by Prosecutor Victor Dizon and then coordinated the operation with the Philippine Drug Enforcement Agency.

Accompanied by the informant, the team proceeded to the target area, which is only about 50 meters away from their office. Upon arrival thereat at about 4:30 p.m., PO3 Fines and the informant posted themselves at the terminal of Sablan-bound passenger jeepneys, just across JR Bakery. Simultaneously, the rest of the team members took strategic positions at the loading area of the jeepneys bound for Plaza Quezon Hill where they would wait for the pre-arranged signal from the poseur-buyer. Not long thereafter, two men, one with a *sando* plastic bag, arrived from Upper Kayang. Manuel, who turned out to be the appellant, approached the informant and asked where the buyer was. The informant pointed to PO3 Fines and introduced him as the prospective buyer. After a brief conversation, appellant demanded the payment from PO3 Fines who immediately handed to him the marked money. Upon receipt, appellant in turn took an item wrapped in a newspaper from the *sando* bag held by

[5] Exhibit "L", records, p. 88.

his companion, later identified as Danglay, and gave the same to PO3 Fines. PO3 Fines smelled and assessed the item and once convinced that it was a brick of marijuana leaves, tapped appellant's shoulder as a signal to his companions that the sale was already consummated. With the brick in hand, PO3 Fines then introduced himself as a police officer and with the aid of SPO4 Sison arrested appellant. Danglay, on the other hand, was arrested by PO3 Sagmayao and, when frisked by the latter, was found possessing 1½ bricks of suspected marijuana.[6] After appellant and Danglay were apprised of their violation and constitutional rights, the team brought them to the police station.

At the police station, PO3 Fines marked the suspected marijuana brick he bought from appellant with "PRF, 04-12-06, BB" representing his initials, date of operation and the word buy-bust. PO3 Sagmayao, on the other hand, marked the confiscated bricks from Danglay with "RPS, 04-12-06." They likewise placed their signatures on the *sando* plastic bag. Appellant and Danglay were also identified at the police station and the suspected dried marijuana leaves inventoried[7] and photographed[8] in their presence as well as of the representatives from the Department of Justice (DOJ), the media and an elected *barangay* official. After a preliminary test on the bricks were made at their office, PO2 Mateo brought on the same day the confiscated items to the Regional Crime Laboratory at Camp Baldo Dangwa, La Trinidad, Benguet for chemistry examination per request of P/Sr. Insp. Olsim.[9] Forensic Chemist Officer P/Sr. Insp. Emilia Gracio Montes[10] then examined the bricks and found them positive for marijuana, a dangerous drug.[11]

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[6] This incident became the subject in Criminal Case No. 26081-R entitled "*People of the Philippines v. Jackson Danglay y Botil* for Violation of Section 11, Article II of Republic Act No. 9165.

[7] Exhibit "D", records, p. 79.

[8] Exhibit "P", *id*. at 99.

[9] Exhibit "G", *id*. at 83.

[10] Oral testimony dispensed with due to the stipulation of facts by the parties, *id.* at 102.

[11] Exhibit "H," *id* at 84.

Version of the Defense

Appellant and Danglay interposed the defense of denial. Both claimed that there was no buy-bust operation, no money recovered and no bricks of marijuana seized from them. They averred that they were just having their snacks at the JR Bakery when they were suddenly arrested and brought to the police station.

Ruling of the Regional Trial Court

In its Decision dated November 5, 2007, the RTC found appellant and Danglay guilty as charged. The dispositive portion of the RTC Decision with its corresponding amendment[12] reads as follows:

> WHEREFORE, judgment is rendered finding both the accused GUILTY beyond any reasonable doubt in Criminal Case No. 26080-R and both are hereby sentenced to suffer LIFE IMPRISONMENT and each to pay a fine of ₱500,000.00 and the costs.
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> x x x x x x x x x
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> SO ORDERED.

Aggrieved, appellant and Danglay separately appealed to the CA[13] wherein they questioned the chain of custody of the subject drugs and the finding of guilt beyond reasonable doubt against them.

Ruling of the Court of Appeals

Like the RTC, the CA gave credence to the police officers' narration of the incident as prosecution witnesses. It brushed aside for being minor inconsistencies the discrepancies in the testimonies of the said witnesses regarding the details of the buy-bust operation, the actual color of the bag containing the subject drugs as well as who was carrying the same. Moreover, the CA rejected appellant and Danglay's defense of denial as they were caught *in flagrante delicto* during a legitimate

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[12] See Order dated November 14, 2007, *id.* at 303-304.

[13] CA *rollo*, pp. 24-26.

entrapment operation. Thus, on November 27, 2009, the CA affirmed the amended RTC Decision, *viz*:

> WHEREFORE, the assailed Decision dated November 5, 2007, as amended by the Order dated November 14, 2007, in Criminal Case Nos. 26080-R x x x of the RTC, Branch 61, Baguio City, is AFFIRMED.
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> SO ORDERED.[14]

Undeterred, appellant interposed the present appeal.[15]

Issue

The sole issue presented for the Court's consideration is whether appellant's guilt for the illegal sale of marijuana, a dangerous drug, was proven beyond reasonable doubt.

Our Ruling

The appeal is bereft of merit.

The alleged defects in the prosecution's version of the incident as well as in the testimonies of its witnesses, as pointed out by appellant, do not affect the material points of the crime charged.

In his quest for the reversal of his conviction, appellant asserts that there was no valid buy-bust operation since, per the prosecution's version, a mere exchange of goods and money without any negotiation, particularly on the quantity and value of the drugs, transpired between him, as the alleged seller, and PO3 Fines, as the poseur-buyer. Moreover, PO3 Fines merely looked at the confiscated item which was then wrapped in paper and packing tape and did not even inspect the same prior to his handing over of the marked money to appellant.

Appellant's arguments fail to impress. While it may be true that it was the informant who brokered the transaction, appellant

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[14] *Id*. at 201.

[15] *Id*. at 207-208; As Danglay did not appeal, the CA Decision insofar as he is concerned thus became final on December 29, 2009, *id*. at 214.

and the poseur-buyer talked to each other after the informant introduced to appellant PO3 Fines as the prospective buyer. As testified to by PO3 Fines, appellant demanded the money from him after their brief conversation. And upon receipt of the item from appellant, he immediately smelled and assessed the contents of the wrapped item and found the same to be a brick of marijuana.[16]

Appellant further challenges the legality of the buy-bust operation by adverting to the alleged inconsistency between the testimony of PO3 Fines, who claims that he did not notice who was carrying the plastic bag containing the alleged dangerous drug or where it came from, and that of SPO4 Sison, who stated that it was Danglay who was carrying the bag. He also invites the Court's attention to the conflicting testimonies of the prosecution witnesses as to the color of the bag. While PO3 Fines mentioned a red colored bag, SPO4 Sison and PO3 Sagmayao stated that Danglay was carrying a blue colored *sando* bag.

The Court, however, finds that the CA correctly agreed with the appellee that the perceived inconsistencies in the testimonies of the prosecution witnesses are insufficient to diminish their credibility. Indeed, the inconsistencies alluded to by the appellant refer merely to minor details and collateral matters that do not in any way affect the material points of the crime charged. As held in *People v. Castro,*[17] "[i]nconsistencies on minor details and collateral matters do not affect the substance of their declaration, their veracity or the weight of their testimonies". "It is perfectly natural for different witnesses testifying on the occurrence of a crime to give varying details as there may be some details which one witness may notice while the other may not observe or remember."[18]

Elements of the crime adequately established; Buy-bust operation regularly conducted.

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[16] TSN, February 5, 2007, pp. 31-32.

[17] 588 Phil. 872, 882 (2008).

[18] *People v. Rosas*, 591 Phil. 111, 119 (2008).

"In prosecutions for illegal sale of dangerous drugs, the following must be proven: (1) that the transaction or sale took place; (2) the *corpus delicti* or the illicit drug was presented as evidence; and (3) that the buyer and seller were identified."[19] "The commission of the offense of illegal sale of dangerous drugs requires merely the consummation of the selling transaction, which happens the moment the buyer receives the drug from the seller. Settled is the rule that as long as the police officer went through the operation as a buyer and his offer was accepted by appellant and the dangerous drugs delivered to the former, the crime is considered consummated by the delivery of the goods.[20]

In this case, the prosecution was able to establish that a sale of one brick of marijuana for ₱1,500.00 took place between PO3 Fines, as buyer, and appellant as seller. The brick of marijuana was presented before the trial court as Exhibit "O." PO3 Fines positively identified appellant as the seller. It is, therefore, beyond doubt that a buy-bust operation involving the illegal sale of marijuana, a dangerous drug, actually took place. Moreover, such buy-bust operation, in the absence of any evidence to the contrary and based on the facts obtaining in this case, was regularly carried out by the police operatives.

"A buy-bust operation is a form of entrapment whereby ways and means are resorted to for the purpose of trapping and capturing the lawbreakers in the execution of their criminal plan."[21] In this regard, police authorities are given a wide discretion in the selection of effective means to apprehend drug dealers and the Court is hesitant to establish on *a priori* basis what detailed acts they might credibly undertake in their entrapment operations for there is no prescribed method on how the operation is to be conducted. As ruled in *People v. Salazar*,[22] a buy-bust operation

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[19] *People v. De la Cruz*, 591 Phil. 259, 269 (2008).

[20] *People v. Dumlao*, 584 Phil. 732, 738 (2008).

[21] *People v. Honrado*, G.R. No. 182197, February 27, 2012, 667 SCRA 45, 51.

[22] 334 Phil. 556, 570 (1997).

deserves judicial sanction as long as it is carried out with due regard to constitutional and legal safeguards, such as in this case.

The police officers' alleged non-compliance with the requirements under Section 21, Article II of RA 9165 was raised by appellant for the first time on appeal; Chain of Custody properly observed in this case.

Appellant harps on the buy-bust team's alleged deviation from the mandated procedure in taking post-seizure custody of the dangerous drug as provided under Section 21, Article II of RA 9165. In his Brief, appellant contends that the physical inventory and marking of the subject illegal drug were not made in his presence and at the place of seizure. Such omission, he asserts, cast grave doubt on whether the drug submitted for laboratory examination, and subsequently presented as evidence in court, was the very same drug allegedly sold by him.

Appellant's insinuation hardly lends credence.

Before anything else, it must be stressed that appellant raised the police operatives' alleged non-compliance with Section 21 of RA 9165 for the first time on appeal. We have painstakingly scrutinized the transcripts of stenographic notes in this case and found no instance wherein appellant at the very least intimated during trial that there were lapses in the safekeeping of the seized item which affected its integrity and evidentiary value. Neither did he try to show that doubts were cast thereon. Such belated attempt on the part of appellant to raise this issue at this point in time can no longer be entertained. Following our ruling in *People v. Sta. Maria*,[23] several subsequent cases[24] teem with

[23] 545 Phil. 520, 534 (2007).

[24] *People v. Hernandez*, G.R. No. 184804, June 18, 2009, 589 SCRA 625, 645; *People v. Lazaro, Jr.*, G.R. No. 186418, October 16, 2009, 604 SCRA 250, 274; *People v. Domado*, G.R. No. 172971, June 16, 2010, 621 SCRA 73, 84; *People v. Desuyo*, G.R. No. 186466, July 26, 2010, 625 SCRA 590, 609; *People v. Mendoza*, G.R. No. 189327, February 29, 2012, 667 SCRA 357, 370; *People v. Robelo*, G.R. No. 184181, November 26, 2012, 686 SCRA 417, 427-428.

pronouncement that objection to evidence cannot be raised for the first time on appeal; when a party desires the court to reject the evidence offered, he must so state in the form of objection. Without such objection, he cannot raise the question for the first time on appeal. The above ruling finds proper application in the present case.

Be that as it may, the fact that the inventory and marking of the subject item were not made onsite is of no moment and will not lead to appellant's exoneration. From a cursory reading of Section 21(a)[25] of the Implementing Rules and Regulations of RA 9165, it can be gleaned that in cases of warrantless seizures, as in this case, inventory and marking of the seized item can be conducted at the nearest police station or office of the apprehending authorities, whichever is practicable, and not necessarily at the place of seizure. As held in *People v. Resurreccion*,[26] "marking upon immediate confiscation" does not exclude the possibility that marking can be done at the police station or office of the apprehending team.[27] Thus, in the present case, the apprehending team cannot be faulted if the inventory and marking were done at their office where appellant was immediately brought for custody and further investigation.

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[25] Section 21(a). The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof; *Provided*, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; *Provided*, further that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items;

[26] G.R. No. 186380, October 12, 2009, 603 SCRA 510.

[27] *Id*. at 520.

Moreover, "[t]he integrity of the evidence is presumed to have been preserved unless there is a showing of bad faith, ill will or proof that the evidence has been tampered with."[28] Notably here, appellant, upon whom the burden of proving that the inventory and marking of the item was not done in his presence, failed to overcome such presumption. While he admitted that there was an inventory, appellant insists that he does not remember if he was present when the same was made. But the photographs[29] taken during the inventory before the representative of the DOJ, media and a *barangay* official belie appellant's protestation.

It bears stressing that the Court has already held in numerous cases[30] that non-compliance with Section 21, Article II of RA 9165 is not fatal and will not render an accused's arrest illegal or the items seized/confiscated from him inadmissible. What is of utmost importance is that the integrity and the evidentiary value of the seized items was properly preserved and safeguarded through an unbroken chain of custody, as further illustrated below.

To wrap up, the totality of the evidence adduced by the prosecution, both testimonial and documentary, clearly shows an unbroken chain of custody as follows: Immediately after the brick of marijuana was handed to PO3 Fines and the arrest of appellant was made, the buy-bust team brought him and the seized item to the police station. Thereat, PO3 Fines marked the wrapping of the brick with "PRF, 04-12-06, BB" referring to his initials, date of operation and "buy-bust" and affixed his signature thereon.[31] An inventory of the seized item was thereafter conducted and the corresponding certificate of inventory was signed by representatives from the DOJ, media and an elected

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[28] *People v. De Mesa*, G.R. No. 188570, July 6, 2010, 624 SCRA 248, 257.

[29] Exhibit "P", records, p. 99.

[30] *People v. Agulay*, 588 Phil. 247, 274 (2008); *People v. Naquita*, 582 Phil. 422, 441-442 (2008); *People v. Concepcion*, 578 Phil. 957, 971 (2008); *People v. Del Monte*, 575 Phil. 576, 586 (2008).

[31] TSN, February 5, 2007, p. 37.

barangay official.[32] Afterwards, the seized item was forwarded by PO2 Mateo, a member of the team, to the PNP Regional Crime Laboratory for forensic examination through a request for laboratory examination[33] prepared and signed by P/Sr. Insp. Olsim. Upon chemical examination, P/Sr. Insp. Montes found the brick of marijuana, which contained the same marking placed by PO3 Fines, positive for marijuana as reflected in her Chemistry Report No. D-016-2006.[34] When presented in court during the trial, PO3 Fines positively identified the marked brick of marijuana as the same brick of marijuana appellant sold to him.[35] Hence, the Court agrees with the following pronouncement of the CA:

> x x x In view of the properly documented accounts of the marking, transfer, and submission to chemistry examination, which ensured the prudent preservation thereof by the apprehending team, we find no reason to rule that the identity and integrity of the subject drugs has been compromised. x x x[36]

Appellant's defense of denial must fail.

Against the credible and positive testimonies of the prosecution witnesses duly supported by documentary evidence, appellant's defense of denial and frame-up necessarily crumble. This line of defense cannot prevail over the established fact that a valid buy-bust operation was indeed conducted and that the identity of the seller and the drug subject of the sale are proven. Moreover, such defenses have been invariably viewed by the court with disfavor for they can easily be concocted and are common and standard defense ploys in most cases involving violations of Dangerous Drugs Act.[37]

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[32] Exhibit "D," records, p. 79.

[33] Exhibit "G," id. at 83.

[34] Exhibit "H," id. at 84.

[35] TSN, February 5, 2007, pp. 36-37

[36] CA *rollo*, p. 200.

[37] *People v. Honrado*, supra note 21 at 54.

The Imposable Penalty

Appellant sold and delivered a brick of marijuana, a dangerous drug, weighing 931.4 grams. Under Section 5, Article II of RA 9165, the sale of dangerous drug, regardless of its quantity and purity, is punishable by life imprisonment to death and a fine of ₱500,000.00 to ₱10 million. With the advent of RA 9346[38] the penalty of death cannot, however, be imposed and consequently, appellant has to be meted only the penalties of life imprisonment and payment of fine. Hence, the Court sustains the penalties of life imprisonment and payment of fine of ₱500,000.00 imposed by the RTC upon appellant, as affirmed by the CA, for being in accordance with law.

WHEREFORE, the appeal is **DISMISSED**. The Decision of the Court of Appeals in CA-G.R. No. CR-H.C. No. 03156 affirming the Decision of the Regional Trial Court of Baguio City, Branch 61, finding appellant Manuel Aplat *y* Sublino guilty beyond reasonable doubt in Criminal Case No. 26080-R of illegal sale of dangerous drug and sentencing him to suffer life imprisonment and to pay a fine of ₱500,000.00 and the costs of suit, is **AFFIRMED**.

SO ORDERED.

Carpio (Chairperson), Brion, Perez, and *Perlas-Bernabe, JJ.,* concur.

[38] An Act Prohibiting the Imposition of Death Penalty in the Philippines.

THIRD DIVISION

[G.R. No. 201663. March 31, 2014]

EMMANUEL M. OLORES, *petitioner, vs.* **MANILA DOCTORS COLLEGE and/or TERESITA O. TURLA,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; APPEAL BY THE EMPLOYER; POSTING OF A BOND IS NOT ONLY MANDATORY BUT A JURISDICTIONAL REQUIREMENT TO PERFECT AN APPEAL TO THE NATIONAL LABOR RELATIONS COMMISSION.— [I]t must be emphasized that Article 223 of the Labor Code states that an appeal by the employer to the NLRC from a judgment of a Labor Arbiter, which involves a monetary award, may be perfected only upon the posting of a cash or surety bond issued by a reputable bonding company duly accredited by the NLRC, in an amount equivalent to the monetary award in the judgment appealed from. Sections 4 (a) and 6 of Rule VI of the New Rules of Procedure of the NLRC, as amended, reaffirm the explicit jurisdictional principle in Article 223. x x x The posting of a bond is indispensable to the perfection of an appeal in cases involving monetary awards from the decisions of the Labor Arbiter. The lawmakers clearly intended to make the bond a mandatory requisite for the perfection of an appeal by the employer as inferred from the provision that an appeal by the employer may be perfected "only upon the posting of a cash or surety bond." The word "only" makes it clear that the posting of a cash or surety bond by the employer is the essential and exclusive means by which an employer's appeal may be perfected. Moreover, the filing of the bond is not only mandatory, but a jurisdictional requirement as well, that must be complied with in order to confer jurisdiction upon the NLRC. Non-compliance therewith renders the decision of the Labor Arbiter final and executory. This requirement is intended to assure the workers that if they prevail in the case, they will receive the money judgment in their favor upon the dismissal of the employer's appeal. It is intended to discourage employers from

using an appeal to delay or evade their obligation to satisfy their employees' just and lawful claims.

2. ID.; ID.; ID.; ID.; EFFECTS OF FAILURE TO FILE AN APPEAL BOND.— Here, it is undisputed that respondent's appeal was not accompanied by any appeal bond despite the clear monetary obligation to pay petitioner his separation pay in the amount of ₱100,000.00. Since the posting of a bond for the perfection of an appeal is both mandatory and jurisdictional, the decision of the Labor Arbiter sought to be appealed before the NLRC had already become final and executory. Therefore, the NLRC had no authority to entertain the appeal, much less to reverse the decision of the Labor Arbiter.

3. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; FILING OF A MOTION FOR RECONSIDERATION IS AN INDISPENSABLE CONDITION; RATIONALE.— The general rule is that a motion for reconsideration is indispensable before resort to the special civil action for *certiorari* to afford the court or tribunal the opportunity to correct its error, if any. The rule is well settled that the filing of a motion for reconsideration is an indispensable condition to the filing of a special civil action for *certiorari*. The rationale for the requirement of first filing a motion for reconsideration before the filing of a petition for *certiorari* is that the law intends to afford the tribunal, board or office an opportunity to rectify the errors and mistakes it may have lapsed into before resort to the courts of justice can be had.

4. ID.; ID.; ID.; ID.; EXCEPTIONS TO THE RULE; APPLICABLE IN CASE AT BAR.— However, said rule is subject to several recognized exceptions: (a) Where the order is a patent nullity, as where the court *a quo* has no jurisdiction; (b) **Where the questions raised in the *certiorari* proceedings have been duly raised and passed upon by the lower court, or are the same as those raised and passed upon in the lower court**; (c) Where there is an urgent necessity for the resolution of the question and any further delay would prejudice the interests of the Government or of the petitioner or the subject matter of the action is perishable; (d) Where, under the circumstances, a motion for reconsideration would be useless; (e) Where petitioner was deprived of due process and there is extreme urgency for relief; (f) Where, in a criminal case, relief from an order of arrest is urgent and the granting of such

relief by the trial court is improbable; (g) Where the proceedings in the lower court are a nullity for lack of due process; (h) Where the proceeding was *ex parte* or in which the petitioner had no opportunity to object; and (i) Where the issue raised is one purely of law or where public interest is involved. In the instant case, the NLRC had all the opportunity to review its ruling and correct itself. The NLRC issued a ruling on February 10, 2011 in favor of petitioner dismissing respondent's appeal on the ground that the latter failed to file an appeal bond. However, upon a motion for reconsideration filed by respondent, the NLRC completely reversed itself and set aside its earlier resolution dismissing the appeal. The NLRC had more than enough opportunity to pass upon the issues raised by both parties on appeal of the ruling of the Labor Arbiter and the subsequent motion for reconsideration of its resolution disposing the appeal. Thus, another motion for reconsideration would have been useless under the circumstances since the questions raised in the *certiorari* proceedings have already been duly raised and passed upon by the NLRC.

APPEARANCES OF COUNSEL

Attorneys Logronio & Magturo for petitioner.
P.R. Cruz Law Offices for respondents.

D E C I S I O N

PERALTA, *J.*:

Before us is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court seeking the reversal of the January 9, 2012[1] and April 27, 2012[2] Resolutions of the Court of Appeals (*CA*) in CA-G.R. SP No. 122596.

The facts, as found by the National Labor Relations Commission (*NLRC*), are as follows:

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[1] Penned by Associate Justice Ramon A. Cruz, with Associate Justices Romeo F. Barza and Antonio L. Villamor, concurring; *rollo*, pp. 47-48.

[2] *Id*. at 50-52.

Respondent is a private higher educational institution dedicated to providing academic degrees and certificate courses related to Allied Medical Services and Liberal Arts and Sciences.

[Petitioner] was hired as a part-time faculty of respondent on 07 November 2005. He was assigned at the Humanities Department of the College of Arts and Sciences. Thereafter, he signed fixed term employment contracts as part-time instructor. From 03 November 2008, [petitioner] signed fixed term employment contracts, this time as a full- time instructor.

For the second semester of academic year 2009-2010, [petitioner] was given the following load assignments:

Subject	Year/Section	No. of Students
Bioethics	BSN 11-B6	46
Bioethics	BSN 11-B7	40
Bioethics	BSN 11-A3	40
Bioethics	BSN 11-A4	40
Bioethics	BSN – A10	41
Philosophy of Man	PSYCH 11	23
Philosophy of Man	HNCA 1	43

Respondent's course syllabus for Bioethics and Philosophy of Man outlined the grading system as follows:

"Bioethics

1. *Class Standing (40%)Quizzes; Recitation; Individual/ Group Oral Presentation; Reflection/Reaction Papers*
2. *Midterm/Final Examinations (60%)*

Philosophy of Man

1. *Class Standing (40%)Term Paper and Completion of Reflection Papers; Group Debates on Current Issues; Group Presentation/Discussion; Exercises/Seat Work/ Board Work; Recitation; Quizzes; Long Test*
2. *Midterm/Final Examinations (60%)"*

The midterm/final examination questionnaires for Bioethics and Philosophy of Man were divided into two (2) parts with the following corresponding points:

	Bioethics	Philosophy of Man
Part I Multiple Choice	65 pts	60 pts
Part II Essay	15 pts	20 pts
Total	80 pts	80 pts

[Petitioner] submitted the final grades of his students to Mr. Jacinto Bernardo, Jr. (Bernardo), the chair of the Humanities Area. On 13 April 2010, Bernardo charged [petitioner] with gross misconduct and gross inefficiency in the performance of duty. [Petitioner] was accused of employing a grading system not in accordance with the system because he: a) added 50 pts to the final examination raw scores; b) added 50 pts to students who have not been attending classes; c) credited only 40% instead of 60% of the final examination; d) did not credit the essay questions; and e) added further incentives (1-4 pts) aside from 50 pts. In so doing, [petitioner] gave grades not based solely on scholastic records.

On 14 April 2010, [petitioner] submitted his answer stating that he: a) did not add 50 pts to the raw scores as verified by the dean and academic coordinator; b) made certain adjustments to help students pass; c) did not credit the essay questions because these have never been discussed in the meetings with Bernardo; and d) did have the judgment to give an incentive for a task well done. Also on this date, [petitioner] wrote a letter to respondent's Human Resources Manager asking that he should now be granted a permanent status.

Meanwhile, summer classes started on 15 April 2010 without [petitioner] having signed an employment contract.

Acting on the report of Bernardo, respondent created the Manila Doctors Tribunal (MDT) which was tasked to ascertain the truth. The MDT sent notices of hearing to [petitioner].

During the administrative hearing, [petitioner] stood pat on his answer. He, however, elucidated on his points by presenting slides.

On 31 May 2010, the MDT submitted its recommendation to the president of respondent. The culpability of [petitioner] was established, hence, dismissal was recommended. On 07 June 2010, respondent terminated the services of [petitioner] for grave misconduct and gross inefficiency and incompetence.

Aggrieved by the decision of respondent, [petitioner] filed a case for: a) illegal dismissal with a claim for reinstatement; b) non-payment of service incentive leave and 13th month pay; c) moral and exemplary damages; d) attorney's fees; and e) regularization.[3]

In a Decision[4] dated December 8, 2010, the Labor Arbiter found merit in petitioner's charge for illegal dismissal. However, it dismissed petitioner's claim for regularization. The decretal portion of said decision reads:

WHEREFORE, judgment is hereby made finding the [petitioner] to have been illegally dismissed from employment. Concomitantly, the respondent school is hereby ordered to reinstate him as faculty member under the same terms and conditions of his employment, without loss of seniority rights but without backwages. However, instead of being reinstated, the [petitioner] is hereby given the option to receive a separation pay equivalent to his full month's pay for every year of service, a fraction of at least six months to be considered a full year or the amount of ₱100,000.00 (his monthly salary of ₱20,000.00) multiplied by the equivalent of five years' service.

Other claims are dismissed for lack of merit.

SO ORDERED.[5]

Respondent appealed from the aforesaid decision to the NLRC. However, the same was denied in a Resolution[6] dated February 10, 2011. The NLRC reasoned that respondent's appeal was not accompanied by neither a cash nor surety bond, thus, no appeal was perfected from the decision of the Labor Arbiter. Pertinent portion of said resolution reads:

Records disclose that the appeal was not accompanied by neither a cash nor surety bond as mandated by Section 6, Rule VI of the 2005 Revised Rules of Procedure of the NLRC, to wit –

"SECTION 6. BOND. – In case the decision of the Labor Arbiter involves a monetary award, an appeal by the employer may be

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[3] *Id*. at 68-71.

[4] *Id*. at 93-103.

[5] *Id*. at 102-103.

[6] *Id*. at 90-92.

> perfected only upon the posting of a bond, which shall either be in the form of cash deposit or surety bond equivalent in amount to monetary award, exclusive of damages and attorney's fees."

The Supreme Court in *Rural Bank of Coron (Palawan) Inc. vs. Annalisa Cortes*, December 6, 2006, emphasized that:

> "In the case at bar, petitioner did not post a full or partial appeal bond within the prescribed period, thus, no appeal was perfected from the Decision of the Labor Arbiter. For this reason, the decision sought to be appealed to the NLRC had become final and executory, and therefore, immutable. Clearly then, the NLRC has no authority to entertain the appeal much less to reverse the decision of the Labor Arbiter. Any amendment or alteration made which substantially affects the final and executory judgment is null and void for lack of jurisdiction, including the entire proceeding held for that purpose."

On account of this infirmity, We are (sic) do not have the jurisdictional competence to entertain the appeal.

WHEREFORE, the appeal is DISMISSED for Non-Perfection.

SO ORDERED.[7]

Respondent, thus, sought reconsideration of the NLRC's resolution.

In a Decision[8] dated September 30, 2011, the NLRC granted respondent's appeal and reversed its earlier resolution. Its *fallo* reads:

> WHEREFORE, premises considered, the appeal is GRANTED. The 08 December 2010 Decision if Reversed and a new one entered: a) dismissing the complaint for lack of merit; and b) ordering respondent Manila Doctors College to pay [petitioner]'s service incentive leaves for the last three years.
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> SO ORDERED.[9]

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[7] *Id*. at 91. (Emphasis in the original)

[8] *Id*. at 67-88.

[9] *Id*. at 88.

Resultantly, petitioner filed a *certiorari* petition with the CA.

In a Resolution dated January 9, 2012, the CA held that since petitioner failed to file a motion for reconsideration against the NLRC decision before seeking recourse to it via a *certiorari* petition, the CA dismissed petitioner's special civil action for *certiorari*, *viz*.:

> It appears that petitioner has not shown that other than this special civil action under Rule 65, he has no plain, speedy and adequate remedy in the ordinary course of law against his perceived grievance.
>
> It is now settled in our jurisdiction that while it is true that the only way by which a labor case may reach this Court is through a petition for *certiorari* under Rule 65 of the Rules of Court, it must, however, be shown that the NLRC acted without or in excess of jurisdiction, or with grave abuse of discretion, and there is no appeal, nor any plain, speedy and adequate remedy in the ordinary course of law. Section 15, Rule VII of the 2005 Revised Rules of Procedure of the NLRC, which allows the aggrieved party to file a motion for reconsideration of any decision, resolution or order of the NLRC, constitutes a plain, speedy and adequate remedy which said party may avail of. Accordingly, in the light of the doctrine of exhaustion of administrative remedies, a motion for reconsideration must first be filed before the special civil action for *certiorari* may be availed of.
>
> In the instant case, the records do not show and neither does petitioner make a claim that it filed a motion for reconsideration of the challenged decision before it came to us through this action. It had not, as well, suggested any plausible reason for direct recourse to this Court against the decision in question.
>
> **WHEREFORE**, the instant special civil action for *certiorari* is DISMISSED.
>
> **SO ORDERED**.[10]

Petitioner filed a motion for reconsideration against said resolution.

In a Resolution dated April 27, 2012, the CA denied petitioner's motion for reconsideration. It ruled that except for his bare

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[10] *Id*. at 47-48. (Emphasis in the original)

allegations, petitioner failed to present any plausible justification for dispensing with the requirement of a prior motion for reconsideration. The CA further stated that although there are exceptions to the rule that *certiorari* will not lie unless a motion for reconsideration is filed, petitioner nevertheless failed to prove that his case falls within any of the recognized exceptions.

Accordingly, petitioner filed the present petition.

Petitioner raises the following grounds to support his petition:

I.

THE COURT OF APPEALS FAR DEPARTED FROM ACCEPTED AND USUAL COURSE OF JURISPRUDENCE WHEN IT IGNORED THE GROSSLY ERRONEOUS DECISION OF THE NLRC GIVING DUE COURSE TO AN APPEAL WITHOUT THE POSTING OF A BOND AS MANDATED BY ARTICLE 223 OF THE LABOR CODE AND THE 2005 NLRC RULES OF PROCEDURE.

II.

THE COURT OF APPEALS FAR DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF JURISPRUDENCE WHEN IT FAILED TO RULE THAT THE NLRC DID NOT ACQUIRE JURISDICTION TO REVERSE THE 08 DECEMBER 2010 DECISION OF THE LABOR ARBITER IN FAVOR OF PETITIONER, HENCE, THE SAME BECAME FINAL, EXECUTORY AND UNAPPEALABLE ON THE PART OF RESPONDENTS.

III.

THE COURT OF APPEALS FAR DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF JURISPRUDENCE WHEN IT REQUIRED PETITIONER TO FILE ANOTHER MOTION FOR RECONSIDERATION AND GIVE THE NLRC MULTIPLE OPPORTUNITIES TO RECONSIDER THE CASE BEFORE FILING A PETITION FOR *CERTIORARI*.

IV.

THE COURT OF APPEALS FAR DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF JURISPRUDENCE WHEN IT FAILED TO REALIZE THAT CIRCUMSTANCES SURROUNDING THE INSTANT CASE, NONETHELESS, FALLS UNDER THE EXCEPTIONS THE REQUIREMENT OF A MOTION FOR

RECONSIDERATION PRIOR TO THE FILING OF A PETITION FOR *CERTIORARI*.

V.

THE NLRC FAR DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF JURISPRUDENCE WHEN IT FAILED TO RULE THAT PETITIONER HAD ALREADY ATTAINED REGULAR STATUS AND REVERSED THE FINDING OF LABOR ARBITER AMANSEC THAT PETITIONER WAS ILLEGALLY DISMISSED.[11]

Essentially, the issues are: (1) whether respondent's appeal with the NLRC was perfected despite its failure to post a bond; and (2) whether the CA erred in dismissing petitioner's Rule 65 petition.

Petitioner asserts that Article 223 of the Labor Code and Section 6, Rule VI of the 2005 Revised Rules of Procedure of the NLRC are consistent in saying that in case of judgment involving a monetary amount, an appeal by the employer may be perfected only upon posting a cash or surety bond. Thus, he argues that since the NLRC did not acquire jurisdiction over the instant case, the decision of the Labor Arbiter had already become final and executory.

Second, petitioner contends that a motion for reconsideration prior to the filing of a *certiorari* petition admits of certain exceptions, that is, when the order appealed from is a patent nullity and when there is urgency of relief. He argues that the instant case falls under one of the exceptions, thus, it should be entertained by the court.

Conversely, respondent asserts that the decision of the Labor Arbiter does not impose a clear and unqualified monetary obligation upon the respondent, thus, it has no obligation to post a bond.

Respondent further avers that the CA did not commit grave abuse of discretion in dismissing petitioner's *certiorari* petition

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[11] *Id*. at 16-17.

for failure to comply with the mandatory requirement of filing a motion for reconsideration. It stresses that there is no showing that the instant case falls under one of the recognized exceptions to the rule of filing a prior motion for reconsideration.

There is merit in the petition.

At the outset, it must be emphasized that Article 223[12] of the Labor Code states that an appeal by the employer to the NLRC

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[12] **Art. 223. Appeal**. Decisions, awards, or orders of the Labor Arbiter are final and executory unless appealed to the Commission by any or both parties within ten (10) calendar days from receipt of such decisions, awards, or orders. Such appeal may be entertained only on any of the following grounds:

1. If there is *prima facie* evidence of abuse of discretion on the part of the Labor Arbiter;
2. If the decision, order or award was secured through fraud or coercion, including graft and corruption;
3. If made purely on questions of law; and
4. If serious errors in the findings of facts are raised which would cause grave or irreparable damage or injury to the appellant.

In case of a judgment involving a monetary award, an appeal by the employer may be perfected only upon the posting of a cash bond issued by a reputable bonding company duly accredited by the Commission in the amount equivalent to the monetary award in the judgment appealed from.

In any event, the decision of the Labor Arbiter reinstating a dismissed or separated employee, insofar as the reinstatement aspect is concerned, shall immediately be executory, even pending appeal. The employee shall either be admitted back to work under the same terms and conditions prevailing prior to his dismissal or separation or, at the option of the employer, merely reinstated in the payroll. The posting of a bond by the employer shall not stay the execution for reinstatement provided herein.

To discourage frivolous or dilatory appeals, the Commission or the Labor Arbiter shall impose reasonable penalty, including fines or censures, upon the erring parties.

In all cases, the appellant shall furnish a copy of the memorandum of appeal to the other party who shall file an answer not later than ten (10) calendar days from receipt thereof.

The Commission shall decide all cases within twenty (20) calendar days from receipt of the answer of the appellee. The decision of the Commission shall be final and executory after ten (10) calendar days from receipt thereof by the parties.

from a judgment of a Labor Arbiter, which involves a monetary award, may be perfected only upon the posting of a cash or surety bond issued by a reputable bonding company duly accredited by the NLRC, in an amount equivalent to the monetary award in the judgment appealed from.[13]

Sections 4 (a) and 6 of Rule VI of the New Rules of Procedure of the NLRC, as amended, reaffirm the explicit jurisdictional principle in Article 223.[14] The relevant provisions state:

SECTION 4. REQUISITES FOR PERFECTION OF APPEAL. – (a) The appeal shall be: 1) filed within the reglementary period provided in Section 1 of this Rule; 2) verified by the appellant himself in accordance with Section 4, Rule 7 of the Rules of Court, as amended; 3) in the form of a memorandum of appeal which shall state the grounds relied upon and the arguments in support thereof, the relief prayed for, and with a statement of the date the appellant received the appealed decision, resolution or order; 4) in three (3) legibly type written or printed copies; and 5) accompanied by i) proof of payment of the required appeal fee; ii) **posting of a cash or surety bond as provided in Section 6 of this Rule**; iii) a certificate of non-forum shopping; and iv) proof of service upon the other parties.

x x x x x x x x x

SECTION 6. BOND. – **In case the decision of the Labor Arbiter or the Regional Director involves a monetary award, an appeal by the employer may be perfected only upon the posting of a bond, which shall either be in the form of cash deposit or surety bond equivalent in the amount to the monetary award, exclusive of damages and attorney's fees**.[15]

Any law enforcement agency may be deputized by the Secretary of Labor and Employment or the Commission in the enforcement of decisions, awards or orders. (As amended by Section 12, Republic Act No. 6715, March 21, 1989) (Emphasis supplied)

[13] *Mindanao Times Corporation v. Confesor*, G.R. No. 183417, February 5, 2010, 611 SCRA 748, 752.

[14] *Ramirez v. Court of Appeals*, G.R. No. 182626, December 4, 2009, 607 SCRA 752, 760.

[15] Emphasis supplied.

The posting of a bond is indispensable to the perfection of an appeal in cases involving monetary awards from the decisions of the Labor Arbiter. The lawmakers clearly intended to make the bond a mandatory requisite for the perfection of an appeal by the employer as inferred from the provision that an appeal by the employer may be perfected "only upon the posting of a cash or surety bond." The word "only" makes it clear that the posting of a cash or surety bond by the employer is the essential and exclusive means by which an employer's appeal may be perfected. Moreover, the filing of the bond is not only mandatory, but a jurisdictional requirement as well, that must be complied with in order to confer jurisdiction upon the NLRC. Non-compliance therewith renders the decision of the Labor Arbiter final and executory. This requirement is intended to assure the workers that if they prevail in the case, they will receive the money judgment in their favor upon the dismissal of the employer's appeal. It is intended to discourage employers from using an appeal to delay or evade their obligation to satisfy their employees' just and lawful claims.[16]

Here, it is undisputed that respondent's appeal was not accompanied by any appeal bond despite the clear monetary obligation to pay petitioner his separation pay in the amount of ₱100,000.00. Since the posting of a bond for the perfection of an appeal is both mandatory and jurisdictional, the decision of the Labor Arbiter sought to be appealed before the NLRC had already become final and executory. Therefore, the NLRC had no authority to entertain the appeal, much less to reverse the decision of the Labor Arbiter.

Nevertheless, assuming that the NLRC has jurisdiction to take cognizance of the instant case, this Court would still be inclined to favor petitioner because the instant case falls under one of the recognized exceptions to the rule that a motion for reconsideration is necessary prior to the filing of a *certiorari* petition.

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[16] *McBurnie v. Ganzon*, G.R. Nos. 178034 & 178117; G.R. Nos. 186984-85, September 18, 2009, 600 SCRA 658, 667.

The general rule is that a motion for reconsideration is indispensable before resort to the special civil action for *certiorari* to afford the court or tribunal the opportunity to correct its error, if any. The rule is well settled that the filing of a motion for reconsideration is an indispensable condition to the filing of a special civil action for *certiorari*.[17]

The rationale for the requirement of first filing a motion for reconsideration before the filing of a petition for *certiorari* is that the law intends to afford the tribunal, board or office an opportunity to rectify the errors and mistakes it may have lapsed into before resort to the courts of justice can be had.[18]

However, said rule is subject to several recognized exceptions:

(a) Where the order is a patent nullity, as where the court *a quo* has no jurisdiction;
(b) Where the questions raised in the *certiorari* proceedings have been duly raised and passed upon by the lower court, or are the same as those raised and passed upon in the lower court;
(c) Where there is an urgent necessity for the resolution of the question and any further delay would prejudice the interests of the Government or of the petitioner or the subject matter of the action is perishable;
(d) Where, under the circumstances, a motion for reconsideration would be useless;
(e) Where petitioner was deprived of due process and there is extreme urgency for relief;
(f) Where, in a criminal case, relief from an order of arrest is urgent and the granting of such relief by the trial court is improbable;
(g) Where the proceedings in the lower court are a nullity for lack of due process;
(h) Where the proceeding was *ex parte* or in which the petitioner had no opportunity to object; and

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[17] *Metro Transit Organization, Inc. v. Court of Appeals*, 440 Phil. 743, 751 (2002).

[18] *Alcosero v. National Labor Relations Commission*, G.R. No. 116884, March 26, 1998, 288 SCRA 129, 137-138.

(i) Where the issue raised is one purely of law or where public interest is involved.[19]

In the instant case, the NLRC had all the opportunity to review its ruling and correct itself.

The NLRC issued a ruling on February 10, 2011 in favor of petitioner dismissing respondent's appeal on the ground that the latter failed to file an appeal bond. However, upon a motion for reconsideration filed by respondent, the NLRC completely reversed itself and set aside its earlier resolution dismissing the appeal. The NLRC had more than enough opportunity to pass upon the issues raised by both parties on appeal of the ruling of the Labor Arbiter and the subsequent motion for reconsideration of its resolution disposing the appeal. Thus, another motion for reconsideration would have been useless under the circumstances since the questions raised in the *certiorari* proceedings have already been duly raised and passed upon by the NLRC.

In a similar case, the Labor Arbiter rendered a decision dismissing petitioner's case for lack of merit. On appeal, the NLRC rendered a decision reversing the decision of the Labor Arbiter and ordered the respondent therein to pay petitioner full backwages, separation pay, salary differentials, 13th month pay and allowances. Not satisfied, respondent therein moved for reconsideration of the aforesaid NLRC resolution. The NLRC, thereafter, granted respondent's motion and reversed its previous ruling. In a like manner, the petitioner therein filed a *certiorari* petition without first filing a motion for reconsideration with the NLRC.[20] Thus, the Court ruled in that case –

The rationale for the requirement of first filing a motion for reconsideration before the filing of a petition for *certiorari* is that the law intends to afford the tribunal, board or office an opportunity to rectify the errors and mistakes it may have lapsed into before resort to the courts of justice can be had. **In the present case, the**

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[19] *Abraham v. National Labor Relations Commission*, 406 Phil. 310, 316 (2001). (Emphasis supplied)

[20] *Id.* at 316-317.

NLRC was already given the opportunity to review its ruling and correct itself when the respondent filed its motion for reconsideration of the NLRC's initial ruling in favor of petitioner. In fact, it granted the motion for reconsideration filed by respondent and reversed its previous ruling and reinstated the decision of the Labor Arbiter dismissing the complaint of the petitioner. It would be an exercise in futility to require the petitioner to file a motion for reconsideration since the very issues raised in the petition for *certiorari, i.e.*, whether or not the petitioner was constructively dismissed by the respondent and whether or not she was entitled to her money claims, were already duly passed upon and resolved by the NLRC. Thus, the NLRC had more than one opportunity to resolve the issues of the case and in fact reversed itself upon reconsideration. It is highly improbable or unlikely under the circumstances that the Commission would reverse or set aside its resolution granting a motion for reconsideration.[21]

All told, the petition is meritorious. However, since this Court is not a trier of facts,[22] we cannot rule on the substantive issue of the case, *i.e.*, whether petitioner has attained regular status, inasmuch as the CA has not yet passed upon the factual issues raised by the parties.

WHEREFORE, premises considered, the instant petition is hereby **GRANTED** and the Resolutions dated January 9, 2012 and April 27, 2012, respectively, of the Court of Appeals in CA-G.R. SP No. 122596, are hereby **REVERSED** and **SET ASIDE**. The case is **REMANDED** to the Court of Appeals for further proceedings.

SO ORDERED.

Velasco, Jr. (Chairperson), Abad, Perlas-Bernabe,[*] and *Leonen, JJ.,* concur.

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[21] *Id.* (Emphasis supplied)

[22] *Spouses Andrada v. Pilhino Sales Corporation*, G.R. No. 156448, February 23, 2011, 644 SCRA 1, 8-9.

[*] Designated Acting Member in lieu of Associate Justice Jose Catral Mendoza, per Special Order No. 1656 dated March 27, 2014.

EN BANC

[B.M. No. 2482. April 1, 2014]

RE: MELCHOR TIONGSON, HEAD WATCHER, DURING THE 2011 BAR EXAMINATIONS

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; MISCONDUCT; SUBSTANTIAL EVIDENCE THEREOF.—** In administrative proceedings, substantial evidence is the quantum of proof required for a finding of guilt, and this requirement is satisfied if the employer has reasonable ground to believe that the employee is responsible for the misconduct. Misconduct means transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by an employee. Any transgression or deviation from the established norm of conduct, work related or not, amounts to a misconduct. In the present case, the OBC has proven with substantial evidence that Tiongson committed a misconduct by violating the Instructions to Head Watchers for the bar examinations. x x x Tiongson admitted that he indeed brought a digital camera inside the bar examination room (despite strict prohibition). Thus, we find that Tiongson's transgression of the rules issued by the OBC amounts to misconduct.

2. **ID.; ID.; MISCONDUCT AND DISHONESTY; ELUCIDATED.—** Misconduct is grave if corruption, clear intent to violate the law or flagrant disregard of an established rule is present; otherwise, the misconduct is only simple. If any of the elements to qualify the misconduct as grave is not manifest and is not proven by substantial evidence, a person charged with grave misconduct may be held liable for simple misconduct. On the other hand, dishonesty refers to a person's disposition "to lie, cheat, deceive, or defraud; untrustworthiness; lack of integrity; lack of honesty, probity or integrity in principle; lack of fairness and straightforwardness; disposition to defraud, deceive or betray."

3. **ID.; ID.; REVISED RULES ON ADMINISTRATIVE CASES IN THE CIVIL SERVICE; SIMPLE MISCONDUCT;**

PENALTY; CASE AT BAR.— The Revised Rules on Administrative Cases in the Civil Service classify simple misconduct as a less grave offense punishable by suspension for one month and one day to six months for the first offense. Under the same Rules, we can consider Tiongson's length of service in the CA of 14 years, more than ten years of service in the bar examinations and his first time to commit an infraction as mitigating circumstances in the imposition of penalty. Accordingly, we impose upon Tiongson the penalty of suspension of one month and one day with a warning that a repetition of the same or similar act in the future shall be dealt with more severely.

R E S O L U T I O N

CARPIO, *J.*:

This is administrative case filed against Melchor Tiongson (Tiongson), head watcher of the 2011 bar examinations held at the University of Sto. Tomas (UST), for bringing a digital camera inside the bar examination room, in violation of the Instructions to Head Watchers.

The Facts

The Office of the Bar Confidant (OBC) designated Tiongson, an employee of the Court of Appeals (CA), to serve as head watcher for the 2011 Bar Examination on 6, 13, 20 and 27 November 2011. Tiongson, together with the designated watchers, namely Eleonor V. Padilla (Padilla), Christian Jay S. Puruganan (Puruganan) and Aleli M. Padre (Padre), were assigned to Room No. 314 of St. Martin De Porres Building in UST.

On 13 November 2011 or during the second Sunday of the bar examinations, Tiongson brought his digital camera inside Room No. 314. Padilla, Puruganan and Padre alleged that after the morning examination in Civil Law, while they were counting the pages of the questionnaire, Tiongson took pictures of the Civil Law questionnaire using his digital camera. Tiongson allegedly repeated the same act and took pictures of the Mercantile Law questionnaire after the afternoon examination.

On the same day, Padilla reported Tiongson's actions to Deputy Clerk of Court and Bar Confidant Atty. Ma. Cristina B. Layusa, who immediately investigated the report. Padilla, Puruganan and Padre subsequently executed separate affidavits confirming Tiongson's actions. Upon demand by the OBC to explain, Tiongson admitted that he brought his digital camera inside the bar examinaton room. He explained that he did not surrender his new digital camera to the badge counter personnel because the counter personnel might be negligent in handling his camera.

In a Memorandum dated 16 November 2011 addressed to the CA Clerk of Court Atty. Teresita R. Marigomen, the OBC revoked and cancelled Tiongson's designation as head watcher for the remaining Sundays of the bar examinations.

In a Resolution dated 10 April 2012, the Court, upon recommendation of the Committee on Continuing Legal Education and Bar Matters, required Tiongson to file his comment.

In his Comment dated 25 May 2012, Tiongson restated his admission that he brought his digital camera inside the bar examination room. Tiongson reiterated his explanation for bringing his camera and apologized for his infraction.

The Report and Recommendation of the OBC

In a Report and Recommendation dated 19 February 2014, the OBC recommended that Tiongson be disqualified indefinitely from serving as bar personnel, in any capacity, in succeeding bar examination.[1] The OBC found Tiongson guilty of dishonesty and gross misconduct for violating a specific provision in the Instructions to Head Watchers prohibiting the bringing of cameras to the bar examination rooms. The OBC explained that:

During the conduct of the Annual Bar Examinations, the Office of the Bar Confidant meticulously processes the selection of qualified

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[1] *Rollo*, unpaged. The Report and Recommendation provides: **WHEREFORE*, in the light of the foregoing premises,*** it is respectfully recommended that Mr. Melchor Tiongson be **DISQUALIFIED INDEFINITELY** from SERVING as bar personnel, in any capacity, during the Annual Bar Examinations."

applicants preferably employees and officers from the Court of Appeals, Lower Courts and Outsiders. Qualified applicants who are considered and designated as bar personnel to serve the bar examinations are required to attend the scheduled briefing for them to be able to know their respective actual functions during the bar examinations, otherwise, their names would be deleted from the lists and would no longer be allowed to serve the bar examinations. During the briefing, the Bar Confidant explained well all the provisions in the instructions for them to be familiarized with and to understand their respective rules in the conduct of the Bar Examinations. They are given the Instructions setting forth their respective actual functions as well as the provisions on the causes for disqualification, revocation and cancellation of their designation/ appointment as bar personnel to serve the bar examinations.

x x x Tiongson attended the required briefing. He cannot, thus, pose any reason at all bringing his digital camera inside the bar examinations room. This is [a] crystal clear violation of the provisions in the Bar Personnel Instructions for the 2011 Bar Examinations. x x x.[2]

The Ruling of the Court

We adopt the findings of the OBC, with modification as to the penalty.

In administrative proceedings, substantial evidence is the quantum of proof required for a finding of guilt,[3] and this requirement is satisfied if the employer has reasonable ground to believe that the employee is responsible for the misconduct.[4] Misconduct means transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by an employee.[5] Any transgression or deviation from

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[2] *Id.*, unpaged.

[3] Rules of Court, Rule 133, Section 5.

[4] *Eduarte v. Ibay*, A.M. No. P-12-3100, 12 November 2013, citing *Re: (1) Lost Checks Issued to the Late Melliza, Former Clerk II, MCTC, Zaragga, Iloilo; and (2) Dropping from the Rolls of Andres*, 537 Phil. 634 (2006).

[5] *Encinas v. Agustin, Jr.*, G.R. No. 187317, 11 April 2013, 696 SCRA 240, citing *Re: Complaint of Mrs. Salvador against Spouses Serafico*, A.M. No. 2008-20-SC, 15 March 2010, 615 SCRA 186.

the established norm of conduct, work related or not, amounts to a misconduct.[6]

In the present case, the OBC has proven with substantial evidence that Tiongson committed a misconduct by violating the Instructions to Head Watchers for the bar examinations.

The Instructions to Head Watchers issued by the OBC clearly provide that "bringing of cellphones and other communication gadgets, deadly weapons, **cameras**, tape recorders, other radio or stereo equipment or any other electronic device is **strictly prohibited**."[7] Padilla, Puruganan and Padre, who were the watchers present in the same examination room, attested that they witnessed Tiongson's violation of this provision during the second Sunday of the bar examinations. Upon being called by the OBC, Tiongson admitted that he indeed brought a digital camera inside the bar examination room. Thus, we find that Tiongson's transgression of the rules issued by the OBC amounts to misconduct.

We, however, disagree with the OBC's recommendation that Tiongson's infraction amounted to gross misconduct and dishonesty.

Misconduct is grave if corruption, clear intent to violate the law of flagrant disregard of an established rule is present; otherwise, the misconduct is only simple.[8] If any of the elements to qualify the misconduct as grave is not manifest and is not proven by substantial evidence, a person charged with grave misconduct may be held liable for simple misconduct.[9] On the other hand, dishonesty refers to a person's disposition "to lie, cheat, deceive, or defraud; untrustworthiness; lack of integrity;

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[6] *Bonono, Jr. vs. Sunit,* A.M. No. P-12-3073, 3 April 2013, 695 SCRA 1.

[7] *Rollo,* unpaged.

[8] *Encinas v. Agustin, Jr., supra* note 5.

[9] *Ampil v. Office of the Ombudsman*, G.R. No. 192685, 31 July 2013, 703 SCRA 1, citing *Santos v. Rasalan*, 544 Phil. 35 (2007); *Alejandro v. Office of the Ombudsman Fact-Finding and Intelligence Bureau*, G.R. No. 173121, 3 April 2013, 695 SCRA 35.

lack of honesty, probity or integrity in principle; lack of fairness and straightforwardness; disposition to defraud, deceive or betray."[10]

We hold Tiongson liable for simple misconduct only, because the elements of grave misconduct were not proven with substantial evidence, and Tiongson admitted his infraction before the OBC.

The Revised Rules on Administrative Cases in the Civil Service[11] classify simple misconduct as a less grave offense punishable by suspension for one month and one day to six months for the first offense. Under the same Rule,[12] we can consider Tiongson's length of service in the CA of 14 years, more than ten years of service in the bar examinations and his first time to commit an infraction as mitigating circumstances in the imposition of penalty. Accordingly, we impose upon Tiongson on the penalty of suspension of one month and one day with a warning that a repetition of the same or similar act in the future shall be dealt with more severely.

As a CA employee, Tiongson disregarded his duty to uphold the strict standards required of every court employee, that is, to be an example of integrity, uprightness and obedience to the judiciary. Thus, he must be reminded that his infraction was unbecoming of a court employee amounting to simple misconduct.

Finally, the Instructions to Head Watchers provide that any violation of the instructions shall be a sufficient cause for disqualification from serving for the remainder of the examinations and in future examinations. Thus, we modify the recommended penalty of the OBC from indefinite disqualification to permanent disqualification from serving as bar personnel, in any capacity, in succeeding bar examinations.

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[10] *Sabidong v. Solas*, A.M. No. P-01-1448, 25 June 2013, 699 SCRA 303, citing *Office of the Court Administrator v. Musngi*, A.M. No. 003024, 17 July 2012, 676 SCRA 525.

[11] CSC Resolution No. 1101502 (promulgated 18 November 2011), Rule X, Section 46 (D).

[12] *Id*., Rule V, Section 48.

WHEREFORE, the Court finds **MELCHOR TIONGSON**, Clerk IV of the Court of Appeals, **GUILTY** of **SIMPLE MISCONDUCT** for violating the Instructions to Head Watchers issued by the Office of the Bar Confidant. He is **SUSPENDED** for one month and one day with a **WARNING** that a repetition of the same or similar act in the future shall be dealt with more severely. He is also **PERMANENTLY DISQUALIFIED** from serving as bar personnel, in any capacity, in succeeding bar examinations.

SO ORDERED.

Sereno, C.J., Velasco, Jr., Leonardo-de Castro, Brion, Peralta, Bersamin, del Castillo, Abad, Villarama, Jr., Perez, Reyes, Perlas-Bernabe, and *Leonen, JJ.*, concur.

Mendoza, J., on official leave.

EN BANC

[G.R. No. 198271. April 1, 2014]

ARNALDO M. ESPINAS, LILLIAN N. ASPRER, and ELEANORA R. DE JESUS, *petitioners, vs.* **COMMISSION ON AUDIT,** *respondent.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL COMMISSIONS; COMMISSION ON AUDIT; EXCLUSIVE AUTHORITY TO PROMULGATE AND INTERPRET ITS OWN ACCOUNTING AND AUDITING RULES AND REGULATIONS.— The CoA's audit power is among the constitutional mechanisms that gives life to the check-and-balance system inherent in our system of government. As an essential complement, the CoA has been vested with the

exclusive authority to promulgate accounting and auditing rules and regulations, including those for the prevention and disallowance of irregular, unnecessary, excessive, extravagant, or unconscionable expenditures or uses of government funds and properties. This is found in Section 2, Article IX-D of the 1987 Philippine Constitution. x x x As an independent constitutional body conferred with such power, it reasonably follows that the CoA's interpretation of its own auditing rules and regulations, as enunciated in its decisions, should be accorded great weight and respect.

2. ID.; ID.; ID.; ID.; NO GRAVE ABUSE OF DISCRETION FOUND IN THE AFFIRMANCE OF NOTICE OF DISALLOWANCE, BASED ON COGENT LEGAL GROUNDS.— The concept is well-entrenched: grave abuse of discretion exists when there is an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law or to act in contemplation of law as when the judgment rendered is not based on law and evidence but on caprice, whim, and despotism. Not every error in the proceedings, or every erroneous conclusion of law or fact, constitutes grave abuse of discretion. The abuse of discretion to be qualified as "grave" must be so patent or gross as to constitute an evasion of a positive duty or a virtual refusal to perform the duty or to act at all in contemplation of law. Viewed in the foregoing light, the Court finds that the CoA did not commit any grave abuse of discretion as its affirmance of Notice of Disallowance No. 09-001-GF(06) is based on cogent legal grounds.

APPEARANCES OF COUNSEL

Arnaldo M. Espinas for petitioners.
The Solicitor General for respondent.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for *certiorari*[1] is respondent Commission on Audit's (CoA) Decision No. 2011-039[2] dated August 8, 2011 which affirmed Notice of Disallowance No. 09-001-GF(06)[3] dated July 21, 2009 covering petitioners' reimbursement claims for extraordinary and miscellaneous expenses for the period January to December 2006.

The Facts

The Local Water Utilities Administration (LWUA) is a government-owned and controlled corporation (GOCC) created[4] pursuant to Presidential Decree No. (PD) 198,[5] as amended, otherwise known as the "Provincial Water Utilities Act of 1973."

Petitioners are department managers of the LWUA who, together with 28 other LWUA officials, sought reimbursement

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[1] Filed under Rule 64 in relation to Rule 65 of the Rules of Court; *rollo*, pp. 3-18.

[2] *Id*. at 21-28. Signed by Chairperson Ma. Gracia M. Pulido-Tan and Commissioners Juanito G. Espino, Jr. and Heidi L. Mendoza.

[3] *Id*. at 38-47.

[4] Section 49 of PD 198, as amended, provides as follows:

> SEC. 49. *Charter*. – There is hereby chartered, created and formed a government corporation to be known as the 'Local Water Utilities Administration' which is hereby attached to the Office of the President. The provisions of this Title shall be and constitute the charter of the Administration.

[5] Entitled "DECLARING A NATIONAL POLICY FAVORING LOCAL OPERATION AND CONTROL OF WATER SYSTEMS; AUTHORIZING THE FORMATION OF LOCAL WATER DISTRICTS AND PROVIDING FOR THE GOVERNMENT AND ADMINISTRATION OF SUCH DISTRICTS; CHARTERING A NATIONAL ADMINISTRATION TO FACILITATE IMPROVEMENT OF LOCAL WATER UTILITIES; GRANTING SAID ADMINISTRATION SUCH POWERS AS ARE NECESSARY TO OPTIMIZE PUBLIC SERVICE FROM WATER UTILITY OPERATIONS, AND FOR OTHER PURPOSES."

of their extraordinary and miscellaneous expenses (EME) for the period January to December 2006. According to petitioners, the reimbursement claims were within the ceiling provided under the LWUA Calendar Year 2006 Corporate Operating Budget approved by the LWUA Board of Trustees and the Department of Budget and Management.[6]

On April 16, 2007, the Office of the CoA Auditor, through Priscilla DG. Cruz, the Supervising Auditor assigned to the LWUA (SA Cruz), issued Audit Observation Memorandum (AOM) No. AOM-2006-27,[7] revealing that the 31 LWUA officials were able to reimburse ₱16,900,705.69 in EME, including expenses for official entertainment, service awards, gifts and plaques, membership fees, and seminars/conferences.[8] Out of the said amount, ₱13,110,998.26 was reimbursed only through an attached certification attesting to their claimed incurrence ("certification").[9] According to the AOM, this violated **CoA Circular No. 2006-01**[10] **dated January 3, 2006** (CoA Circular No. 2006-01), which pertinently states that the "**claim for reimbursement of such expenses shall be supported by receipts and/or other documents evidencing disbursements**."[11]

During the CoA Exit Conference held sometime in April 2007, LWUA management officials, including herein petitioners, manifested that they were unaware of the existence of CoA

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[6] Citing LWUA Board of Trustees Resolution No. 225, series of 2005, dated November 30, 2005 which was issued pursuant to Section 69 of PD 198, as amended, authorizing the LWUA Board to appropriate such amounts as it may deem necessary for its operational expenses. (See *rollo*, pp. 4-5.)

[7] *Id*. at 32-34.

[8] *Id*. at 5-6.

[9] *Id*. at 6.

[10] Entitled "GUIDELINES ON THE DISBURSEMENT OF EXTRAORDINARY AND MISCELLANEOUS EXPENSES AND OTHER SIMILAR EXPENSES IN GOVERNMENT-OWNED AND CONTROLLED CORPORATIONS/GOVERNMENT FINANCIAL INSTITUTIONS AND THEIR SUBSIDIARIES," *id*. at 35-37.

[11] *Id*. at 32-33; emphases and underscoring supplied.

Circular No. 2006-01, particularly during the period January to December 2006.[12]

After the post-audit of the LWUA EME account for the same period, SA Cruz issued Notice of Disallowance No. 09-001-GF(06)[13] dated July 21, 2009, disallowing the EME reimbursement claims of the 31 LWUA officials, in the total amount of ₱13,110,998.26, for the reason that they "were not supported by receipts and/or [other] documents evidencing disbursements as required under [Item III(3)] of [CoA Circular No. 2006-01]."[14]

Pursuant to the CoA's 2009 Revised Rules of Procedure, petitioners appealed the notice of disallowance to the CoA Cluster Director (Corporate Sector - Cluster B),[15] contending that the "certification" they attached in support of their EME reimbursement claims was originally allowed under **Section 397 of the Government Accounting and Auditing Manual, Volume I** (GAAM - Vol. I),[16] which is a reproduction of **Item III(4) of CoA Circular No. 89-300**[17] **dated March 21, 1989** (CoA Circular No. 89-300), *viz.*:

> 4. x x x The corresponding claim for reimbursement of such expenses shall be supported by receipts and/or other documents evidencing disbursement, if these are available, **or, in lieu thereof, by a certification executed by the official concerned that the expenses sought to be reimbursed have been incurred** for any of the purposes contemplated under Section 19 and other related sections of RA 6688 (or similar provision[s] in subsequent General Appropriations Acts) in relation to or by reason of his position. In the case of miscellaneous expenses incurred for an office specified in the law,

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[12] *Id*. at 6.

[13] *Id*. at 38-47.

[14] *Id*. at 38.

[15] *Id*. at 48-66.

[16] *Id*. at 50-51

[17] *Id*. at 91-92.

such certification shall be executed solely by the head of the office.[18] (Emphasis supplied)

Further, petitioners alleged that CoA Circular No. 2006-01 is violative of the equal protection clause since officials of GOCCs, such as the LWUA officials, are, among others, prohibited by virtue of the same issuance from supporting their reimbursement claims with "certifications," unlike officials of the national government agencies (NGAs) who have been so permitted.[19] To this end, petitioners argued that the employees of NGAs and GOCCs are similarly situated and that there exists no substantial distinction between them.[20]

Finally, petitioners submitted that CoA Circular No. 2006-01 was not duly published in the Official Gazette, or in a newspaper of general circulation and thus, unenforceable.[21]

The CoA Cluster Director's Ruling

Petitioners' appeal was denied by CoA Cluster Director IV Divinia M. Alagon (CoA Cluster Director Alagon) in Decision No. 2010-003[22] dated April 13, 2010, thereby affirming Notice of Disallowance No. 09-001-GF(06).

Applying the statutory construction principle of *ejusdem generis*,[23] CoA Cluster Director Alagon held that a certification executed by the official concerned for the purpose of claiming

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[18] *Id.* at 92.

[19] *Id.* at 58-63.

[20] *Id.* at 59-60.

[21] *Id.* at 63-64.

[22] *Id.* at 68-71.

[23] "The basic statutory construction principle of *ejusdem generis* states that where a general word or phrase follows an enumeration of particular and specific words of the same class, the general word or phrase is to be construed to include – or to be restricted to – things akin to or resembling, or of the same kind or class as, those specifically mentioned. "(*Liwag v. Happy Glen Loop Homeowners Association, Inc.*, G.R. No. 189755, July 4, 2012, 675 SCRA 744, 754.)

EME cannot be construed to fall under the phrase "other documents evidencing disbursements" as provided under Item III(3) of CoA Circular No. 2006-01.[24] She explained that a certification is not of the same class as a receipt because the latter is issued by a third person, while the former is issued by the claimant, and usually self-serving.[25] Moreover, certifications are not evidence of disbursements but are just assertions made by the claimants that they have spent a fixed amount every month for meetings, seminars, public relations and the like.[26] In this relation, CoA Cluster Director Alagon noted that CoA Circular No. 2006-01 is stricter as it does not mention a certification as an alternative supporting document for the claim for reimbursement.[27] This is based on the observation that boards of GOCCs and government financial institutions (GFIs) are invariably empowered to appropriate through resolutions such amounts as they deem proper for EME.[28] Thus, the exclusion of said certifications in CoA Circular No. 2006-01 is a control measure purposely integrated thereto to regulate the incurrence of these expenditures and to ensure the prevention and disallowance of irregular, unnecessary, excessive, extravagant or unconscionable expenditures or uses of government funds.[29]

CoA Cluster Director Alagon also opined that there lies no violation of the equal protection clause since GOCCs and GFIs are empowered to appropriate EME through board resolutions, while the EME for NGAs must be provided in a law enacted by Congress (*i.e.*, the General Appropriations Act [GAA]).[30] Accordingly, there is a reasonable classification which is germane to the purpose of CoA Circular No. 2006-01.[31]

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[24] *Rollo,* pp. 69-70

[25] *Id.* at 70.

[26] *Id.*

[27] *Id.*

[28] *Id.*

[29] *Id.* at 70.

[30] *Id.* at 71.

[31] *Id.*

Finally, CoA Cluster Director Alagon stated that CoA Circular No. 2006-01 was published in the Manila Standard Today in its February 24, 2006 issue; hence, petitioners' assertion on this score was found to be baseless.[32]

Unconvinced, petitioners elevated the ruling to the Commission Proper, docketed as CoA CP Case No. 2010-101,[33] averring that: (*a*) the principle of *ejusdem generis* does not apply since there is no enumeration of things followed by general words in CoA Circular No. 2006-01;[34] (*b*) the certifications fall under the category of documents evidencing disbursements under Item III(3) of the same issuance, which, in any case, have been previously allowed under Section 397 of GAAM - Vol. I and CoA Circular No. 89-300;[35] and (*c*) there exists no valid classification between officials of NGAs and officials of GOCCs and GFIs.[36] Petitioners' previous contention on the circular's lack of publication was no longer raised in their petition to the Commission Proper.

The Commission Proper's Ruling

In its Decision No. 2011-039[37] dated August 8, 2011, the CoA affirmed Notice of Disallowance No. 09-001-GF(06) but differed from CoA Cluster Director Alagon's reasoning.

The CoA agreed with petitioners that the principle of *ejusdem generis* was not applicable since CoA Circular No. 2006-01 does not contain any enumeration of specific terms which are followed by a general word or phrase. However, it held that the principle's non-applicability does not necessarily buttress petitioners' main argument that the phrase "and/or other documents evidencing disbursements" includes the "certifications"

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[32] *Id*.

[33] *Id*. at 72-90.

[34] *Id*. at 77-78.

[35] *Id*. at 79-81.

[36] *Id*. at 81-87.

[37] *Id*. at 21-28.

issued to support the claim for EME reimbursement. This is because the "other documents evidencing disbursements" must refer to documents that evidence disbursement, of which the certifications – being mere general statements that the certified amount was used as EME, and is within the prescribed ceiling therefor – are not.[38]

It further debunked petitioners' reliance on the provisions of Section 397 of GAAM - Vol. I and Item III(4) of CoA Circular No. 89-300 as these issuances actually show the contrary intention to include "certifications" in the phrase "other documents evidencing disbursements" as among the documents sufficient to support the claim for EME reimbursement under Item III(3) of CoA Circular No. 2006-01. The "certification" is separate and distinct from the term "other documents evidencing disbursements" whether under Section 397 of GAAM - Vol. I or Item III(4) of CoA Circular No. 89-300. The certification under these issuances is "in lieu of" the receipts and/or other documents evidencing disbursement. Moreover, the CoA observed that if the term "certification" is intended to be included in the term or among the "other documents evidencing disbursements" that will support a claim for EME reimbursement, then Section 397 of GAAM - Vol. I and Item III(4) of CoA Circular No. 89-300 would have stated so; however, the latter provisions did not. Besides, the CoA pointed out that CoA Circular No. 2006-01 specifically applies to GOCCs, GFIs and their subsidiaries, while CoA Circular No. 89-300, from which Section 397 of GAAM - Vol. I was lifted, exclusively applies to NGAs.[39]

Finally, the CoA maintained that there is a substantial distinction between the officials of NGAs and the officials of the GOCCs, GFIs and their subsidiaries insofar as their entitlement to EME is concerned. The former's EME is sourced from the annual GAA, while the latter's EME is provided by their corporate operating budget approved by their respective governing boards. In connection therewith, the CoA emphasized

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[38] *Id*. at 24.

[39] *Id*. at 24-26.

that the issuance of CoA Circular No. 2006-01 is pursuant to its exclusive constitutional authority to promulgate accounting and auditing rules and regulations, including those for the prevention and disallowance of irregular, unnecessary, excessive, extravagant, or unconscionable expenditures or uses of government funds. It is therefore within the purview of its mandate and the above-stated distinctions that CoA Circular No. 2006-01 must be interpreted.[40]

Dissatisfied, petitioners filed the present *certiorari* petition, imputing grave abuse of discretion on the part of the CoA.

The Issue Before the Court

The primordial issue for the Court's resolution is whether or not grave abuse of discretion attended the CoA's ruling in this case.

The Court's Ruling

The petition lacks merit.

The CoA's audit power is among the constitutional mechanisms that gives life to the check-and-balance system inherent in our system of government.[41] As an essential complement, the CoA has been vested with the exclusive authority to promulgate accounting and auditing rules and regulations, including those for the prevention and disallowance of irregular, unnecessary, excessive, extravagant, or unconscionable expenditures or uses of government funds and properties. This is found in Section 2, Article IX-D of the 1987 Philippine Constitution which provides that:

> Sec. 2. x x x.
>
> (2) The Commission shall have **exclusive authority**, subject to the limitations in this Article, to define the scope of its audit and examination, establish the techniques and methods required therefor, and **promulgate accounting and auditing rules and**

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[40] *Id*. at 26-27.

[41] *Dimapilis-Baldoz v. COA*, G.R. No. 199114, July 16, 2013.

> **regulations**, including those for the prevention and disallowance of irregular, unnecessary, excessive, extravagant, or unconscionable expenditures or uses of government funds and properties. (Emphases supplied)

As an independent constitutional body conferred with such power, it reasonably follows that the CoA's interpretation of its own auditing rules and regulations, as enunciated in its decisions, should be accorded great weight and respect. In the recent case of *Delos Santos v. CoA*,[42] the Court explained the general policy of the Court towards CoA decisions reviewed under *certiorari*[43] parameters:[44]

> [T]he CoA is endowed with enough latitude to determine, prevent, and disallow irregular, unnecessary, excessive, extravagant or unconscionable expenditures of government funds. It is tasked to be vigilant and conscientious in safeguarding the proper use of the government's, and ultimately, the people's property. The exercise of its general audit power is among the constitutional mechanisms that gives life to the check and balance system inherent in our form of government.
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> x x x **[I]t is the general policy of the Court to sustain the decisions of administrative authorities, especially one which is constitutionally-created, such as the CoA**, **not only on the basis of the doctrine of separation of powers but also for their presumed expertise in the laws they are entrusted to enforce**. Findings of administrative agencies are accorded not only respect but also finality when the decision and order are not tainted with unfairness or arbitrariness that would amount to grave abuse of discretion. **It is only when the CoA has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of**

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[42] G.R. No. 198457, August 13, 2013.

[43] "Under Rule 64, Section 2 of the 1997 Rules of Civil Procedure, a judgment or final order of the COA may be brought by an aggrieved party to this Court on *certiorari* under Rule 65. Thus, it is only through a petition for *certiorari* under Rule 65 that the COA's decisions may be reviewed and nullified by us on the ground of grave abuse of discretion or lack or excess of jurisdiction." (*Benguet State University v. COA*, 551 Phil. 878, 883 [2007]).

[44] *Delos Santos v. COA*, *supra* note 42.

jurisdiction, that this Court entertains a petition questioning its rulings. x x x. (Emphases and underscoring supplied)

The concept is well-entrenched: grave abuse of discretion exists when there is an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law or to act in contemplation of law as when the judgment rendered is not based on law and evidence but on caprice, whim, and despotism.[45] Not every error in the proceedings, or every erroneous conclusion of law or fact, constitutes grave abuse of discretion. The abuse of discretion to be qualified as "grave" must be so patent or gross as to constitute an evasion of a positive duty or a virtual refusal to perform the duty or to act at all in contemplation of law.[46]

Viewed in the foregoing light, the Court finds that the CoA did not commit any grave abuse of discretion as its affirmance of Notice of Disallowance No. 09-001-GF(06) is based on cogent legal grounds.

First off, the Court concurs with the CoA's conclusion that the "certification" submitted by petitioners cannot be properly considered as a supporting document within the purview of Item III(3) of CoA Circular No. 2006-01 which pertinently states that a "**claim for reimbursement of [EME] expenses shall be supported by receipts and/or <u>other documents evidencing disbursements</u>**." Similar to the word "receipts," the "other documents" pertained to under the above-stated provision is qualified by the phrase "evidencing disbursements." Citing its lexicographic definition, the CoA stated that the term "disbursement" means "to pay out commonly from a fund" or "to make payment in settlement of debt or account payable."[47] That said, it then logically follows that petitioners' "certification," so as to fall under the phrase "other documents" under Item III(3) of CoA Circular No. 2006-01, must substantiate the "paying out of an account payable," or, in simple term, a disbursement.[48]

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[45] *Id*.; citations omitted.

[46] *Dimapilis-Baldoz v. COA, supra* note 41; citations omitted.

[47] *Rollo,* p. 24.

[48] *Id.*, citing *BLACK'S LAW DICTIONARY,* 6th Ed., p. 463.

However, an examination of the sample "certification"[49] attached to the petition does not, by any means, fit this description. The signatory therein merely certifies that he/she has spent, within a particular month, a certain amount for meetings, seminars, conferences, official entertainment, public relations, and the like, and that the certified amount is within the ceiling authorized under the LWUA corporate budget. Accordingly, since petitioners' reimbursement claims were solely supported by this "certification," the CoA properly disallowed said claims for failure to comply with CoA Circular No. 2006-01.

The CoA also correctly rejected petitioners' invocation of the provisions of Section 397 of GAAM - Vol. I and CoA Circular No. 89-300 since, at the outset, such rules are applicable only to NGAs, and not to GOCCs, GFIs and their subsidiaries which are specifically governed by CoA Circular No. 2006-01.[50] A perusal of CoA Circular No. 89-300, from which Section 397 of GAAM - Vol. I was merely reproduced, clearly indicates in Item II thereof, captioned "Scope and Coverage," that the rules thereunder applies to "appropriations authorized under [the GAA of 1989] for **National Government agencies** [that] may be used for incurrence of extraordinary and miscellaneous expenses at the rates and by the offices and officials specified therein for, among others x x x."[51] A similar inference may be reached from a reading of Item I of CoA Circular No. 89-300, captioned as "Rationale," which states that the circular was made in response to the "increasing number of queries and requests for clarification as to the real import and true intent of [the provisions of the GAA of 1989] authorizing the use by certain **national government officials** of appropriations authorized for their agencies for extraordinary and miscellaneous expenses."[52] On the other hand, Item II of CoA Circular No. 2006-01, captioned as "Scope and Coverage," explicitly states that "[t]his circular

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[49] *Id.* at 67.

[50] *Id.* at 26.

[51] *Id.* at 91.

[52] *Id.*

shall be applicable to all **GOCCs, GFIs and their subsidiaries**" and shall cover their "extraordinary and miscellaneous expenses and other similar expenses."[53] Item I of CoA Circular No. 2006-01, captioned as "Rationale," also mentions the CoA's declared policy to "prescribe rules and regulations specifically for **government corporations** to regulate the incurrence of these expenditures and ensure the prevention and disallowance of irregular, unnecessary, excessive, extravagant, or unconscionable expenditures or uses of government funds" considering that "**[g]overning boards of [GOCCs/GFIs]** are invariably empowered to appropriate through resolutions such amounts as they deem appropriate for extraordinary and miscellaneous expenses."[54] Based on the foregoing, it is readily apparent that petitioners' reliance on Section 397 of GAAM - Vol. I and Item III(4) of CoA Circular No. 89-300 was improper, hence, the CoA's apt dismissal of the same.

Lastly, the Court upholds the CoA's finding that there exists a substantial distinction[55] between officials of NGAs and the officials of GOCCs, GFIs and their subsidiaries which justify the peculiarity in regulation. Since the EME of GOCCs, GFIs and their subsidiaries, are, pursuant to law, allocated by their own internal governing boards, as opposed to the EME of NGAs which are appropriated in the annual GAA duly enacted by Congress, there is a perceivable rational impetus for the CoA to impose nuanced control measures to check if the EME disbursements of GOCCs, GFIs and their subsidiaries constitute

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[53] *Id.* at 36.

[54] *Id.* at 35.

[55] "Substantial distinctions "is a requirement for valid classification. As held in the landmark case on the subject of equal protection, *People v. Cayat* (68 Phil. 12, 18 [1939]):

It is an established principle of constitutional law that the guaranty of the equal protection of the laws is not violated by a legislation based on reasonable classification. And the classification, to be reasonable, (1) **must rest on substantial distinctions**; (2) must be germane to the purposes of the law; (3) must not be limited to existing conditions only; and (4) must apply equally to all members of the same class. (Emphasis supplied; citations omitted)

irregular, unnecessary, excessive, extravagant, or unconscionable government expenditures. Case in point is the LWUA Board of Trustees which, pursuant to Section 69 of PD 198, as amended, is "authorized to appropriate out of any funds of the Administration, such amounts as it may deem necessary for the operational and other expenses of the Administration including the purchase of necessary equipment." Indeed, the Court recognizes that denying GOCCs, GFIs and their subsidiaries the benefit of submitting a secondary-alternate document in support of an EME reimbursement, such as the "certification" discussed herein, is a CoA policy intended to address the disparity in EME disbursement autonomy. As pertinently stated in CoA Circular No. 2006-01, the consideration underlying the rules and regulations contained therein is the fact that "[g]overning boards of [GOCCs/GFIs] are invariably empowered to appropriate through resolutions such amounts as they deem appropriate for extraordinary and miscellaneous expenses."[56] Hence, in due deference to the CoA's constitutional prerogatives, the Court, absent any semblance of grave abuse of discretion in this case, respects the regulation, and consequently dismisses the petition. With these pronouncements, the Court finds it unnecessary to delve on the other ancillary issues raised by the parties in their pleadings. Notice of Disallowance No. 09-001-GF(06) dated July 21, 2009 is therefore upheld and the persons therein held liable are ordered to duly return the disallowed amount of ₱13,110,998.26.

WHEREFORE, the petition is **DISMISSED**. Accordingly, Notice of Disallowance No. 09-001-GF(06) dated July 21, 2009 is hereby **AFFIRMED.**

SO ORDERED.

Sereno, C.J., Carpio, Velasco, Jr., Leonardo-de Castro, Brion, Peralta, Bersamin, del Castillo, Abad, Villarama, Jr., Perez, Reyes, and *Leonen, JJ.,* concur.

Mendoza, J., on official leave.

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[56] *Rollo,* p. 35.

SECOND DIVISION

[A.M. No. RTJ-09-2200. April 2, 2014]
(Formerly OCA I.P.I. No. 08-2834-RTJ)

ANTONIO M. LORENZANA, *complainant, vs.* **JUDGE MA. CECILIA I. AUSTRIA, Regional Trial Court, Branch 2, Batangas City,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE CASES; SUBSTANTIAL EVIDENCE, REQUIRED; MERE ALLEGATION IS NOT SUFFICIENT; CASE AT BAR.— It is well settled that in administrative cases, the complainant bears the onus of proving the averments of his complaint by substantial evidence. In the present case, the allegations of **grave abuse of authority**, **irregularity in the performance of duty**, **grave bias and partiality**, and **lack of circumspection** are devoid of merit because the complainant failed to establish the respondent's bad faith, malice or ill will. The complainant merely pointed to circumstances based on mere conjectures and suppositions. These, by themselves, however, are not sufficient to prove the accusations. "[M]ere allegation is not evidence and is not equivalent to proof." "[U]nless the acts were committed with fraud, dishonesty, corruption, malice or ill-will, bad faith, or deliberate intent to do an injustice, [the] respondent judge may not be held administratively liable for gross misconduct, ignorance of the law or incompetence of official acts in the exercise of judicial functions and duties, particularly in the adjudication of cases."

2. ID.; ID.; JUDGES; ERROR IN THE EXERCISE OF JUDICIAL FUNCTIONS; CORRECTIBLE BY JUDICIAL REMEDIES.— [G]ranting that the respondent [judge] indeed erred in the exercise of her judicial functions, these are, at best, legal errors correctible not by a disciplinary action, but by judicial remedies that are readily available to the complainant. "An administrative complaint is not the appropriate remedy for every irregular or erroneous order or decision issued by a judge where a judicial remedy is available, such as a motion for reconsideration or an appeal." Errors committed by him/

her in the exercise of adjudicative functions cannot be corrected through administrative proceedings but should be assailed instead through judicial remedies.

3. ID.; ID.; ID.; GRAVE BIAS AND PARTIALITY; REQUIRES CLEAR AND CONVINCING EVIDENCE.— [T]he allegations of bias and partiality on the part of the respondent are baseless. The truth about the respondent's alleged partiality cannot be determined by simply relying on the complainant's verified complaint. Bias and prejudice cannot be presumed, in light especially of a judge's sacred obligation under his oath of office to administer justice without respect to the person, and to give equal right to the poor and rich. There should be clear and convincing evidence to prove the charge; mere suspicion of partiality is not enough.

4. ID.; ID.; ID.; GRAVE INCOMPETENCE AND GROSS IGNORANCE OF THE LAW; BAD FAITH, FRAUD, DISHONESTY OR CORRUPTION MUST ALSO BE ESTABLISHED; CASE AT BAR.— "[A]s a matter of policy, in the absence of fraud, dishonesty or corruption, the acts of a judge in his judicial capacity are not subject to disciplinary action even though such acts are erroneous." In the present case, what was involved was the respondent's application of Section 23, Rule 4 of the Rules [an] *Approval of the Rehabilitation Plan*. The respondent approved the rehabilitation plan submitted by Atty. Gabionza, **subject to the modifications she found necessary to make the plan viable,** [thus] exceeded her authority and effectively usurped the functions of a rehabilitation receiver. We find, however, that in failing to show that the respondent was motivated by bad faith or ill motives in rendering the assailed decision, the charge of gross ignorance of the law against her should be dismissed. "To [rule] otherwise would be to render judicial office untenable, for no one called upon to try the facts or interpret the law in the process of administering justice can be infallible in his judgment." To constitute gross ignorance of the law, it is not enough that the decision, order or actuation of the judge in the performance of his official duties is contrary to existing law and jurisprudence. It must also be proven that he was moved by bad faith, fraud, dishonesty or corruption or had committed an error so egregious that it amounted to bad faith.

x x x Bad faith cannot be presumed and this Court cannot conclude that bad faith intervened when none was actually proven.

5. ID.; ID.; ID.; DEEMED PRESENT WHEN REHABILITATION COURT JUDGE ORDERED THE CREATION OF MANAGEMENT COMMITTEE WITHOUT FIRST CONDUCTING AN EVIDENTIARY HEARING FOR THE PURPOSE; CASE AT BAR.— With respect to the action of the respondent in ordering the creation of a management committee without first conducting an evidentiary hearing for the purpose, we find the error to be so egregious as to amount to bad faith, leading to the conclusion of gross ignorance of the law, as charged. Due process and fair play are basic requirements that no less than the Constitution demands. In rehabilitation proceedings, the parties must first be given an opportunity to prove (or disprove) the existence of an imminent danger of dissipation, loss, wastage or destruction of the debtor-company's assets and properties that are or may be prejudicial to the interest of minority stockholders, parties-litigants or the general public. The rehabilitation court should hear both sides, allow them to present proof and conscientiously deliberate, based on their submissions, on whether the appointment of a management receiver is justified. This is a very basic requirement in every adversarial proceeding that no judge or magistrate can disregard. x x x Indeed, while a judge may not be held liable for gross ignorance of the law for every erroneous order that he renders, this does not mean that a judge need not observe due care in the performance of his/her official functions. When a basic principle of law is involved and when an error is so gross and patent, error can produce an inference of bad faith, making the judge liable for gross ignorance of the law.

6. ID.; ID.; ID.; CONDUCT UNBECOMING OF A JUDGE; PRESENT AS JUDGE FAILED TO OBSERVE JUDICIAL TEMPERAMENT AND TO CONDUCT HERSELF IRREPROACHABLY AND TO MAINTAIN THE DECORUM REQUIRED BY THE CODE AND TO USE TEMPERATE LANGUAGE BEFITTING OF A MAGISTRATE.— Section 6, Canon 6 of the New Code of Judicial Conduct states that: SECTION 6. Judges shall maintain order and decorum in all proceedings before the court and **be patient, dignified and courteous in relation to litigants,**

witnesses, lawyers and others with whom the judge deals in an official capacity. Judges shall require similar conduct of legal representatives, court staff and others subject to their influence, direction or control. A judge should always conduct himself in a manner that would preserve the dignity, independence and respect for himself/herself, the Court and the Judiciary as a whole. He must exhibit the hallmark judicial temperament of utmost sobriety and self-restraint. He should choose his words and exercise more caution and control in expressing himself. In other words, a judge should possess the virtue of *gravitas*. x x x Accordingly, the respondent's unnecessary bickering with SCP's legal counsel, her expressions of exasperation over trivial procedural and negligible lapses, her snide remarks, as well as her condescending attitude, are conduct that the Court cannot allow. They are displays of arrogance and air of superiority that the Code abhors. Records and transcripts of the proceedings bear out that the respondent failed to observe judicial temperament and to conduct herself irreproachably. She also failed to maintain the decorum required by the Code and to use temperate language befitting a magistrate. "As a judge, [she] should ensure that [her] conduct is always above reproach and perceived to be so by a reasonable observer. [She] must never show conceit or even an appearance thereof, or any kind of impropriety." [In accordance with] Section 1, Canon 2 of the New Code of Judicial Conduct.

7. ID.; ID.; ID.; IMPROPRIETY; PRESENT WHEN JUDGE POSTED *FRIENDSTER* PHOTOS OF HERSELF WEARING AN "OFF-SHOULDERED" SUGGESTIVE DRESS AND MADE THIS AVAILABLE FOR PUBLIC VIEWING.— While judges are not prohibited from becoming members of and from taking part in social networking activities, we remind them that they do not thereby shed off their status as judges. They carry with them in cyberspace the same ethical responsibilities and duties that every judge is expected to follow in his/her everyday activities. x x x Section 6, Canon 4 of the New Code of Judicial Conduct, imposes a correlative restriction on judges: in the exercise of their freedom of expression**, they should always conduct themselves in a manner that preserves the dignity of the judicial office and the impartiality and independence of the Judiciary**. This rule reflects the general principle of propriety expected of judges in all of their activities, whether

it be in the course of their judicial office or in their personal lives. In particular, Sections 1 and 2 of Canon 4 of the New Code of Judicial Conduct prohibit impropriety and even the appearance of impropriety in all of their activities: x x x Based on this provision, we hold that the respondent disregarded the propriety and appearance of propriety required of her when she posted *Friendster* photos of herself wearing an "off-shouldered" suggestive dress and made this available for public viewing. x x x As the visible personification of law and justice, **judges are held to higher standards of conduct and thus must accordingly comport themselves**. This exacting standard applies **both to acts involving the judicial office and personal matters**. The very nature of their functions requires behavior under exacting standards of morality, decency and propriety; both in the performance of their duties and their daily personal lives, they should be beyond reproach. Judges necessarily accept this standard of conduct when they take their oath of office as magistrates.

8. ID.; ID.; ID.; GROSS IGNORANCE OF THE LAW; IMPOSABLE PENALTIES.— Under Section 8, Rule 140 of the Rules of Court, as amended by A.M. No. 01-8-10-SC, gross ignorance of the law or procedure is classified as a serious charge. Under Section 11(A) of the same Rule, a serious charge merits any of the following sanctions: 1. Dismissal from the service, forfeiture of all or part of the benefits as the Court may determine, and disqualification from reinstatement or appointment to any public office, including government-owned or controlled corporations; provided, however, that the forfeiture of benefits shall in no case include accrued leave credits; 2. Suspension from office without salary and other benefits for more than three (3), but not exceeding six (6), months; or 3. A fine of more than ₱20,000.00, but not exceeding ₱40,000.00.

9. ID.; ID.; ID.; CONDUCT UNBECOMING OF A JUDGE; IMPOSABLE PENALTIES.— [C]onduct unbecoming of a judge is classified as a light offense under Section 10, Rule 140 of the Rules of Court. It is penalized under Section 11(C) thereof by any of the following: (1) A fine of not less than ₱1,000.00 but not exceeding ₱10,000.00; (2) Censure; (3) Reprimand; and (4) Admonition with warning.

D E C I S I O N

BRION, *J.*:

We resolve in this Decision the administrative complaints[1] filed by Antonio M. Lorenzana (*complainant*) against Judge Ma. Cecilia I. Austria (*respondent*), Regional Trial Court (*RTC*), Branch 2, Batangas City.

The records show that the administrative complaints arose from the case "*In the Matter of the Petition to have Steel Corporation of the Philippines Placed under Corporate Rehabilitation with Prayer for the Approval of the Proposed Rehabilitation Plan*," docketed as SP. Proc. No. 06-7993, where the respondent was the presiding judge. The complainant was the Executive Vice President and Chief Operating Officer of Steel Corporation of the Philippines (*SCP*), a company then under rehabilitation proceedings.

i. Complaint

In his verified complaint dated January 21, 2008, the complainant alleged that in the course of SP. Proc. No. 06-7993, the respondent committed Gross Ignorance of the Law, Grave Abuse of Authority, Gross Misconduct, Grave Incompetence, Irregularity in the Performance of Duty, Grave Bias and Partiality, Lack of Circumspection, Conduct Unbecoming of a Judge, Failure to Observe the Reglementary Period and Violation of the Code of Professional Responsibility, as shown by the following instances:

1. The respondent appointed Atty. Santiago T. Gabionza, Jr. as rehabilitation receiver over SCP's objections and despite serious conflict of interest in being the duly appointed rehabilitation receiver for SCP and, at the same time, the external legal counsel of most of SCP's creditors; he is also a partner of the law firm that he engaged as legal adviser.

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[1] *Rollo,* pp. 1-20.

2. The respondent conducted informal meetings (which she termed as "*consultative meetings*" in her Order[2] dated May 11, 2007) in places outside her official jurisdiction (*i.e.,* a first class golf club, a hotel and sports club facilities in Metro Manila) and where she arbitrarily dictated the terms, parameters and features of the rehabilitation plan she wanted to approve for SCP. She also announced in the meetings that she would prepare the rehabilitation plan for SCP.

3. The modified rehabilitation plan submitted by Atty. Gabionza is a replica of what the respondent dictated to him. Thus, the respondent exceeded the limits of her authority and effectively usurped and pre-empted the rehabilitation receiver's exercise of functions.

4. The respondent ordered that the proceedings of the informal meetings be off-record so that there would be no record that she had favored Equitable-PCI Bank (EPCIB).

5. The respondent had secret meetings and communications with EPCIB to discuss the case without the knowledge and presence of SCP and its creditors.

6. The respondent appointed Gerardo Anonas (*Anonas*) as Atty. Gabionza's financial adviser and, at the same time, as her financial adviser to guide her in the formulation and development of the rehabilitation plan, for a fee of ₱3.5M at SCP's expense. Anonas is also the cousin-in-law of the managing partner of Atty. Gabionza's law firm.

7. The respondent encouraged EPCIB to raise complaints or accusations against SCP, leading to EPCIB's filing of a motion to create a management committee.

8. When requested to conduct an evidentiary meeting and to issue a subpoena (so that SCP could confront EPCIB's witnesses to prove the allegation that there was a need

[2] *Id.* at 21.

for the creation of a management committee), the respondent denied SCP's requests and delayed the issuance of the order until the last minute.

9. At the hearing of September 14, 2007, the respondent intimidated SCP's counsel, Atty. Ferdinand Topacio; blocked his every attempt to speak; refused to recognize his appearances in court; and made condescending and snide remarks.

10. The respondent failed to observe the reglementary period prescribed by the Interim Rules of Procedure on Corporate Rehabilitation (*Rules*). She approved the rehabilitation plan beyond the 180 days given to her in the Rules, without asking for permission to extend the period from the Supreme Court (*SC*).

11. The respondent erroneously interpreted and applied Section 23, Rule 4 of the Rules (the court's power to approve the rehabilitation plan) to include the power to amend, modify and alter it.

12. The respondent took a personal interest and commitment to decide the matter in EPCIB's favor and made comments and rulings in the proceedings that raised concerns regarding her impartiality.

13. The respondent adamantly refused to inhibit herself and showed special interest and personal involvement in the case.

ii. Supplemental Complaint

The complainant likewise filed a supplemental complaint[3] dated April 14, 2008 where he alleged that the respondent committed an act of impropriety when she displayed her photographs in a social networking website called "*Friendster*" and posted her personal details as an RTC Judge, allegedly for the purpose of finding a compatible partner. She also posed with her upper body barely covered by a shawl, allegedly suggesting that nothing was worn underneath except probably a brassiere.

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[3] *Id*. at 102-104.

The Office of the Court Administrator (*OCA*) in its 1st Indorsement[4] dated March 18, 2008, referred the complaints to the respondent for comment.

a. Comment to January 21, 2008 Complaint

The respondent vehemently denied the allegations against her. While she admitted that she crafted a workable, feasible rehabilitation plan best suited for SCP, she maintained that she did so only to render fairness and equity to all the parties to the rehabilitation proceedings. She also submitted that if indeed she erred in modifying the rehabilitation plan, hers was a mere error of judgment that does not call for an administrative disciplinary action. Accordingly, she claimed that the administrative complaints were premature because judicial remedies were still available.[5]

The respondent also argued that the rules do not prohibit informal meetings and conferences. On the contrary, she argued that informal meetings are even encouraged in view of the summary and non-adversarial nature of rehabilitation proceedings. Since Section 21, Rule 4 of the Rules[6] gives the rehabilitation receiver the power to meet with the creditors, then there is all the more reason for the rehabilitation judge, who has the authority to approve the plan, to call and hold meetings with the parties. She also pointed out that it was SCP which suggested that informal meetings be called and that she only agreed to hold these meetings on the condition that all the parties would attend.

As to her alleged failure to observe the reglementary period, she contended that she approved the rehabilitation plan within the period prescribed by law. She argued that the matter of

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[4] *Id.* at 71.

[5] *Id.* at 115-172.

[6] Sec. 21. Creditors' Meetings.– At any time before he submits his evaluation on the rehabilitation plan to the court as prescribed in Section 9, Rule 4 of this Rule, the Rehabilitation Receiver may, either alone or with the debtor, **meet with the creditors or any interested party to discuss the plan with a view to clarifying or resolving any matter connected therewith**. [emphasis ours]

granting extension of time under Section 11, Rule 4 of the Rules[7] pertains not to the SC, but to the rehabilitation court.

The respondent likewise refuted the allegations of bias and partiality. *First*, she claimed that her denial of the complainant's motion for inhibition was not due to any bias or prejudice on her part but due to lack of basis. *Second*, she argued that her decision was not orchestrated to favor EPCIB, as evidenced by the fact that EPCIP itself (as some other creditors did) promptly appealed her decision to the Court of Appeals (*CA*). *Third*, she did not remove Atty. Gabionza as SCP's rehabilitation receiver because she disagreed that the grounds the complainant raised warranted his removal. She also found no merit to the allegation of conflict of interest. *Lastly*, she maintained that the rest of the complainant's allegations were not substantiated and corroborated by evidence.

The respondent further alleged that she did not gravely abuse her authority in not issuing a subpoena as Section 1, Rule 3 of the Interim Rules on Corporate Rehabilitation of the Rules specifically states that the court may decide matters on the basis of affidavits and other documentary evidence.

On the allegation of conflict of interest, she maintained that the allegations were not proven and substantiated by evidence. Finally, the respondent also believed that there was nothing improper in expressing her ideas during the informal meetings.

b. Comment to April 14, 2008 Supplemental Complaint

In her comment[8] on the supplemental complaint, the respondent submitted that the photos she posted in the social networking

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[7] Sec. 11. x x x.

The petition shall be [dismissed] if no rehabilitation plan is approved by the court upon the lapse of one hundred eighty (180) days from the date of the initial hearing. **The court may grant an extension beyond this period only if it appears by convincing and compelling evidence that the debtor may successfully be rehabilitated.** In no instance, however, shall the period for approving or disapproving a rehabilitation plan exceed **eighteen (18) months from the date of filing of the petition**.

[8] *Rollo*, pp. 209-230.

website "*Friendster*" could hardly be considered vulgar or lewd. She added that an "off-shouldered" attire is an acceptable social outfit under contemporary standards and is not forbidden. She further stated that there is no prohibition against attractive ladies being judges; she is proud of her photo for having been aesthetically made. Lastly, she submitted that the ruling of the Court in the case of *Impao v. Judge Makilala*[9] should not be applied to her case since the facts are different.

On July 4, 2008, the complainant filed a reply,[10] insisting that the respondent's acts of posting "seductive" pictures and maintaining a "*Friendster*" account constituted acts of impropriety, in violation of Rules 2.01,[11] 2.02[12] and 2.03,[13] Canon 2 of the Code of Judicial Conduct.

In a Resolution[14] dated September 9, 2009, the Court re-docketed the complaints as regular administrative matters, and referred them to the CA for investigation, report and recommendation.

The CA's Report and Recommendation

On November 13, 2009, Justice Marlene Gonzales-Sison, the Investigating Justice, conducted a hearing, followed by the submission of memoranda by both parties.

In her January 4, 2010 Report and Recommendation,[15] Justice Gonzales-Sison ruled that the complaints were partly meritorious. She found that the issues raised were judicial in nature since these involved the respondent's appreciation of evidence.

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[9] 258-A Phil. 234 (1989).

[10] *Rollo*, pp. 331-353.

[11] RULE 2.01 - A judge should so behave at all times as to promote public confidence in the integrity and impartiality of the judiciary.

[12] RULE 2.02 - A judge should not seek publicity for personal vainglory.

[13] RULE 2.03 - A judge shall not allow family, social, or other relationships to influence judicial conduct or judgment.

[14] *Rollo*, pp. 370-374.

[15] *Id.* at 599-625.

She also added that while the CA resolved to set aside the respondent's decision in the rehabilitation proceedings, it was not by reason of her ignorance of the law or abuse of authority, but because the rehabilitation plan could no longer be implemented in view of SCP's financial predicament.

On the allegation of grave bias and partiality in handling the rehabilitation proceedings, Justice Gonzales-Sison ruled that the complainant failed to present any clear and convincing proof that the respondent intentionally and deliberately acted against SCP's interests; the complaint merely relied on his opinions and surmises.

On the matter of the respondent's inhibition, she noted that in cases not covered by the rule on mandatory inhibition, the decision to inhibit lies within the discretion of the sitting judge and is primarily a matter of conscience.

With respect to the respondent's informal meetings, Justice Gonzales-Sison found nothing irregular despite the out-of-court meetings as these were agreed upon by all the parties, including SCP's creditors. She also found satisfactory the respondent's explanation in approving the rehabilitation plan beyond the 180-day period prescribed by the Rules.

The foregoing notwithstanding, Justice Gonzales-Sison noted the respondent's unnecessary bickering with SCP's legal counsel and ruled that her exchanges and utterances were reflective of arrogance and superiority. In the words of the Justice Gonzales-Sison:

> Rather than rule on the manifestations of counsels, she instead brushed off the matter with what would appear to be a conceited show of a prerogative of her office, a conduct that falls below the standard of decorum expected of a judge. Her statements appear to be done recklessly and were uncalled for. x x x. Section 6[,] Canon 6 of the New Code of Judicial Conduct for the Philippine Judiciary states that: judges shall maintain order and decorum in all proceedings before the court and be patient, dignified and courteous in relation to litigants, witnesses, lawyers and others whom the judge deals in an official capacity. **Judicial decorum requires judges to be temperate in their language at all times. Failure on this regard**

amounts to a conduct unbecoming of a judge, for which Judge Austria should be held liable.[16]

On the respondent's Friendster account, she believes that her act of maintaining a personal social networking account (displaying photos of herself and disclosing personal details as a magistrate in the account) – even during these changing times when social networking websites seem to be the trend – constitutes an act of impropriety which cannot be legally justified by the public's acceptance of this type of conduct. She explained that propriety and the appearance of propriety are essential to the performance of all the activities of a judge and that judges shall conduct themselves in a manner consistent with the dignity of the judicial office.

Finally, Justice Gonzales-Sison noted the CA's May 16, 2006 decision[17] in CA-G.R. SP No. 100941 finding that the respondent committed grave abuse of discretion in ordering the creation of a management committee without first conducting an evidentiary hearing in accordance with the procedures prescribed under the Rules. She ruled that such professional incompetence was tantamount to gross ignorance of the law and procedure, and recommended a fine of ₱20,000.00. She also recommended that the respondent be admonished for failing to observe strict propriety and judicial decorum required by her office.

The Action and Recommendation of the OCA

In its Memorandum[18] dated September 4, 2013, the OCA recommended the following:

RECOMMENDATION: It is respectfully recommended for the consideration of the Honorable Court that:

1) the Report dated January 4, 2010 of Investigating Justice Marlene Gonzales-Sison be NOTED;

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[16] *Id*. at 620; emphases ours.

[17] *Id*. at 646.

[18] *Id*. at 630-646.

2) respondent Judge Ma. Cecilia I. Austria, Branch 2, Regional Trial Court, Batangas City, Batangas, be found GUILTY of conduct unbecoming a judge and for violation of Section 6, Canon 4 of the New Code of Judicial Conduct;

3) respondent Judge Austria be FINED in the amount of Twenty Thousand Pesos (Php20,000.00); and

4) respondent Judge Austria be ADMONISHED to refrain from further acts of impropriety with a stern warning that a repetition of the same or any similar act will be dealt with more severely.[19]

In arriving at its recommendation the OCA found that the respondent was not guilty of gross ignorance of the law as the complainant failed to prove that her orders were motivated by bad faith, fraud, dishonesty or corruption.

The OCA also found that the charges of bias and partiality in handling the rehabilitation proceedings were not supported by evidence. It accepted the respondent's explanation in the charge of failure to observe the reglementary period.

Lastly, the OCA maintained that the allegations of grave abuse of authority and gross incompetence are judicial in nature, hence, they should not be the subject of disciplinary action. On the other hand, on allegations of conduct unbecoming of a judge, violation of the Code of Professional Responsibility (*Code*), lack of circumspection and impropriety, the OCA shared Justice Gonzales-Sison's observations that the respondent's act of posting seductive photos in her Friendster account contravened the standard of propriety set forth by the Code.

The Court's Ruling

We agree with the recommendation of both Justice Gonzales-Sison and the OCA for the imposition of a fine on the respondent but modify the amount as indicated below. We sustain Justice Gonzales-Sison's finding of gross ignorance of the law in so far as the respondent ordered the creation of a management committee without conducting an evidentiary hearing. The absence

[19] *Id.* at 491-506.

of a hearing was a matter of basic due process that no magistrate should be forgetful or careless about.

On the Charges of Grave Abuse of Authority; Irregularity in the Performance of Duty; Grave Bias and Partiality; and Lack of Circumspection

It is well settled that in administrative cases, the complainant bears the onus of proving the averments of his complaint by substantial evidence.[20] In the present case, the allegations of **grave abuse of authority**, **irregularity in the performance of duty**, **grave bias and partiality**, and **lack of circumspection** are devoid of merit because the complainant failed to establish the respondent's bad faith, malice or ill will. The complainant merely pointed to circumstances based on mere conjectures and suppositions. These, by themselves, however, are not sufficient to prove the accusations. "[M]ere allegation is not evidence and is not equivalent to proof."[21]

"[U]nless the acts were committed with fraud, dishonesty, corruption, malice or ill-will, bad faith, or deliberate intent to do an injustice, [the] respondent judge may not be held administratively liable for gross misconduct, ignorance of the law or incompetence of official acts in the exercise of judicial functions and duties, particularly in the adjudication of cases."[22]

Even granting that the respondent indeed erred in the exercise of her judicial functions, these are, at best, legal errors correctible not by a disciplinary action, but by judicial remedies that are readily available to the complainant. "An administrative complaint is not the appropriate remedy for every irregular or erroneous order or decision issued by a judge where a judicial remedy is available, such as a motion for reconsideration or an appeal."[23]

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[20] *Spouses Oliveros v. Judge Sison*, 552 Phil. 839, 844 (2007).

[21] *Sasing v. Gelbolingo*, A.M. No. P-12-3032, February 20, 2013, 691 SCRA 241, 248.

[22] *Andrada v. Hon. Judge Banzon*, 592 Phil. 229, 233-234 (2008).

[23] *Cordero v. Justice Enriquez*, 467 Phil. 611, 618 (2004).

Errors committed by him/her in the exercise of adjudicative functions cannot be corrected through administrative proceedings but should be assailed instead through judicial remedies.[24]

On the Charges of Grave Bias and Partiality

We likewise find the allegations of bias and partiality on the part of the respondent baseless. The truth about the respondent's alleged partiality cannot be determined by simply relying on the complainant's verified complaint. Bias and prejudice cannot be presumed, in light especially of a judge's sacred obligation under his oath of office to administer justice without respect to the person, and to give equal right to the poor and rich.[25] There should be clear and convincing evidence to prove the charge; mere suspicion of partiality is not enough.[26]

In the present case, aside from being speculative and judicial in character, the circumstances cited by the complainant were grounded on mere opinion and surmises. The complainant, too, failed to adduce proof indicating the respondent's predisposition to decide the case in favor of one party. This kind of evidence would have helped its cause. The bare allegations of the complainant cannot overturn the presumption that the respondent acted regularly and impartially. We thus conclude that due to the complainant's failure to establish with clear, solid, and convincing proof, the allegations of bias and partiality must fail.

On the Charges of Grave Incompetence and Gross Ignorance of the Law

We agree with the findings of the OCA that not every error or mistake of a judge in the performance of his official duties renders him liable.[27] "[A]s a matter of policy, in the absence of fraud, dishonesty or corruption, the acts of a judge in his judicial

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[24] *Bello, III v. Judge Diaz*, 459 Phil. 214, 221 (2003).

[25] *Negros Grace Pharmacy, Inc. v. Judge Hilario,* 461 Phil. 843, 849 (2003).

[26] *Carriaga v. Anasario*, 444 Phil. 685, 690 (2003).

[27] *Dipatuan v. Mangotara*, A.M. No. RTJ-09-2190, April 23, 2010, 619 SCRA 48, 56.

capacity are not subject to disciplinary action even though such acts are erroneous."[28]

In the present case, what was involved was the respondent's application of Section 23, Rule 4 of the Rules, which provides:

> Sec. 23. *Approval of the Rehabilitation Plan*. – **The court may approve a rehabilitation plan** even over the opposition of creditors holding a majority of the total liabilities of the debtor if, in its judgment, the rehabilitation of the debtor is feasible and the opposition of the creditors is manifestly unreasonable.[29]

The respondent approved the rehabilitation plan submitted by Atty. Gabionza, **subject to the modifications she found necessary to make the plan viable.** The complainant alleged that in modifying the plan, she exceeded her authority and effectively usurped the functions of a rehabilitation receiver. We find, however, that in failing to show that the respondent was motivated by bad faith or ill motives in rendering the assailed decision, the charge of gross ignorance of the law against her should be dismissed. "To [rule] otherwise would be to render judicial office untenable, for no one called upon to try the facts or interpret the law in the process of administering justice can be infallible in his judgment."[30]

To constitute gross ignorance of the law, it is not enough that the decision, order or actuation of the judge in the performance of his official duties is contrary to existing law and jurisprudence. It must also be proven that he was moved by bad faith, fraud, dishonesty or corruption[31] or had committed an error so egregious that it amounted to bad faith.

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[28] *Salvador v. Limsiaco, Jr.*, 519 Phil. 683, 687 (2006).

[29] Emphasis ours, italics supplied.

[30] *Magdadaro v. Saniel, Jr.*, A.M. No. RTJ-12-2331, December 10, 2012, 687 SCRA 401, 408.

[31] *Lago v. Abul, Jr.*, A.M. No. RTJ-10-2255, February 8, 2012, 665 SCRA 247, 251.

In the present case, nothing in the records suggests that the respondent was motivated by bad faith, fraud, corruption, dishonesty or egregious error in rendering her decision approving the modified rehabilitation plan. Besides his bare accusations, the complainant failed to substantiate his allegations with competent proof. Bad faith cannot be presumed[32] and this Court cannot conclude that bad faith intervened when none was actually proven.

With respect to the action of the respondent in ordering the creation of a management committee without first conducting an evidentiary hearing for the purpose, however, we find the error to be so egregious as to amount to bad faith, leading to the conclusion of gross ignorance of the law, as charged.

Due process and fair play are basic requirements that no less than the Constitution demands. In rehabilitation proceedings, the parties must first be given an opportunity to prove (or disprove) the existence of an imminent danger of dissipation, loss, wastage or destruction of the debtor-company's assets and properties that are or may be prejudicial to the interest of minority stockholders, parties-litigants or the general public.[33] The rehabilitation court should hear both sides, allow them to present proof and conscientiously deliberate, based on their submissions, on whether the appointment of a management receiver is justified. This is a very basic requirement in every adversarial proceeding that no judge or magistrate can disregard.

In SCP's rehabilitation proceedings, SCP was not given at all the opportunity to present its evidence, nor to confront the EPCIB witnesses. Significantly, the CA, in its May 16, 2006 decision, found that the respondent's act of denying SCP the opportunity to disprove the grounds for the appointment of a management committee was tantamount to grave abuse of discretion. As aptly observed by Justice Gonzales-Sison:

[T]he acts of the respondent judge (Judge Austria) in creating a MANCOM without observing the procedures prescribed under the

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[32] *Gatmaitan v. Dr. Gonzales*, 525 Phil. 658, 671 (2006).

[33] Section 6, par. (d) of Presidential Decree No. 902-A.

IRPGICC clearly constitute grave abuse of discretion amounting to excess of jurisdiction.[34]

Indeed, while a judge may not be held liable for gross ignorance of the law for every erroneous order that he renders, this does not mean that a judge need not observe due care in the performance of his/her official functions.[35] When a basic principle of law is involved and when an error is so gross and patent, error can produce an inference of bad faith, making the judge liable for gross ignorance of the law.[36] On this basis, we conclude that the respondent's act of promptly ordering the creation of a management committee, without the benefit of a hearing and despite the demand for one, was tantamount to punishable professional incompetence and gross ignorance of the law.

On the Ground of Failure to Observe the Reglementary Period

On the respondent's failure to observe the reglementary period prescribed by the Rules, we find the respondent's explanation to be satisfactory.

Section 11, Rule 4 of the previous Rules provides:

> Sec. 11. Period of the Stay Order. – x x x
>
> The petition shall be dismissed if no rehabilitation plan is approved by the court upon the lapse of one hundred eighty (180) days from the date of the initial hearing. **The *court* may grant an extension** beyond this period only if it appears by convincing and compelling evidence that the debtor may successfully be rehabilitated. In no instance, however, shall the period for approving or disapproving a rehabilitation plan exceed eighteen (18) months from the date of filing of the petition.[37]

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[34] *Rollo*, p. 622.

[35] *Dipatuan v. Mangotara*, *supra* note 27, at 56-57.

[36] *Gacad v. Clapis, Jr.*, A.M. No. RTJ-10-2257, July 17, 2012, 676 SCRA 534, 548.

[37] Italics and emphasis ours.

Under this provision, the matter of who would grant the extension beyond the 180-day period carried a good measure of ambiguity as it did not indicate with particularity whether the rehabilitation court could act by itself or whether Supreme Court approval was still required. Only recently was this uncertainty clarified when A.M. No. 00-8-10-SC, the 2008 Rules of Procedure on Corporate Rehabilitation, took effect.

Section 12, Rule 4 of the Rules provides:

> Section 12. Period to Decide Petition. – The court shall decide the petition within one (1) year from the date of filing of the petition, unless the court, for good cause shown, is able to secure an extension of the period **from the Supreme Court**.[38]

Since the new Rules only took effect on January 16, 2009 (long after the respondent's approval of the rehabilitation plan on December 3, 2007), we find no basis to hold the respondent liable for the extension she granted and for the consequent delay.

On the Ground of Conduct Unbecoming of a Judge

On the allegation of conduct unbecoming of a judge, Section 6, Canon 6 of the New Code of Judicial Conduct states that:

> SECTION 6. Judges shall maintain order and decorum in all proceedings before the court and **be patient, dignified and courteous in relation to litigants, witnesses, lawyers and others with whom the judge deals in an official capacity**. Judges shall require similar conduct of legal representatives, court staff and others subject to their influence, direction or control.[39]

A judge should always conduct himself in a manner that would preserve the dignity, independence and respect for himself/herself, the Court and the Judiciary as a whole. He must exhibit the hallmark judicial temperament of utmost sobriety and self-restraint.[40]

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[38] Emphasis ours.

[39] Emphasis ours.

[40] *Soria v. Judge Villegas*, 485 Phil. 406, 415 (2004).

He should choose his words and exercise more caution and control in expressing himself. In other words, a judge should possess the virtue of *gravitas*.[41]

As held in *De la Cruz (Concerned Citizen of Legazpi City) v. Judge Carretas*,[42] a judge should be considerate, courteous and civil to all persons who come to his court; he should always keep his passion guarded. He can never allow it to run loose and overcome his reason. Furthermore, a magistrate should not descend to the level of a sharp-tongued, ill-mannered petty tyrant by uttering harsh words, snide remarks and sarcastic comments.

Similarly in *Attys. Guanzon and Montesino v. Judge Rufon*,[43] the Court declared that "although respondent judge may attribute his intemperate language to human frailty, his noble position in the bench nevertheless demands from him courteous speech in and out of court. Judges are required to always be temperate, patient and courteous, both in conduct and in language."

Accordingly, the respondent's unnecessary bickering with SCP's legal counsel, her expressions of exasperation over trivial procedural and negligible lapses, her snide remarks, as well as her condescending attitude, are conduct that the Court cannot allow. They are displays of arrogance and air of superiority that the Code abhors.

Records and transcripts of the proceedings bear out that the respondent failed to observe judicial temperament and to conduct herself irreproachably. She also failed to maintain the decorum required by the Code and to use temperate language befitting a magistrate. "As a judge, [she] should ensure that [her] conduct is always above reproach and perceived to be so by a reasonable

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[41] *Dela Cruz (Concerned Citizen of Legazpi City) v. Judge Carretas*, 559 Phil. 5, 15 (2007).

[42] *Id*. at 15-16.

[43] 562 Phil. 633, 638 (2007); citation omitted.

observer. [She] must never show conceit or even an appearance thereof, or any kind of impropriety."[44]

Section 1, Canon 2 of the New Code of Judicial Conduct states that:

> SECTION 1. Judges shall ensure that not only is their conduct above reproach, but that it is perceived to be so in the view of a reasonable observer.

In these lights, the respondent exhibited conduct unbecoming of a judge and thus violated Section 6, Canon 6 and Section 1, Canon 2 of the New Code of Judicial Conduct.

On the Ground of Impropriety

We are not unaware of the increasing prevalence of social networking sites in the Internet – a new medium through which more and more Filipinos communicate with each other.[45] **While judges are not prohibited from becoming members of and from taking part in social networking activities, we remind them that they do not thereby shed off their status as judges**. They carry with them in cyberspace the same ethical responsibilities and duties that every judge is expected to follow in his/her everyday activities. It is in this light that we judge the respondent in the charge of impropriety when she posted her pictures in a manner viewable by the public.

Lest this rule be misunderstood, **the New Code of Judicial Conduct does not prohibit a judge from joining or maintaining an account in a social networking site such as *Friendster***. Section 6, Canon 4 of the New Code of Judicial Conduct

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[44] *Dela Cruz (Concerned Citizen of Legazpi City) v. Judge Carretas, supra* note 41, at 17.

[45] The Philippines has been dubbed as "the social networking capital of the world" in 2011 by the blog 24/7 Wall Street, which compiled a list of countries where Facebook penetration (usage per population) is highest. Jon Russell, *Philippines named social networking capital of the world*, Asiancorrespondent.com, May 15, 2011 at http://asiancorrespondent.com/54475/philippines-named-the-social-networking-capital-of-the-world-indonesia-malaysia-amongst-top-10/.

recognizes that judges, like any other citizen, are entitled to freedom of expression. This right "includes the freedom to hold opinions without interference and impart information and ideas **through any media regardless of frontiers."**[46] Joining a social networking site is an exercise of one's freedom of expression. The respondent judge's act of joining *Friendster* is, therefore, *per se* not violative of the New Code of Judicial Conduct.

Section 6, Canon 4 of the New Code of Judicial Conduct, however, also imposes a correlative restriction on judges: in the exercise of their freedom of expression**, they should always conduct themselves in a manner that preserves the dignity of the judicial office and the impartiality and independence of the Judiciary**.

This rule reflects the general principle of propriety expected of judges in all of their activities, whether it be in the course of their judicial office or in their personal lives. In particular, Sections 1 and 2 of Canon 4 of the New Code of Judicial Conduct prohibit impropriety and even the appearance of impropriety in all of their activities:

> SECTION 1. Judges shall avoid impropriety and the appearance of impropriety ***in all of their activities***.
>
> SECTION 2. As a subject of constant public scrutiny, judges must accept personal restrictions that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly. In particular, judges shall conduct themselves in a way that is consistent with the dignity of the judicial office.

Based on this provision, we hold that the respondent disregarded the propriety and appearance of propriety required of her when she posted *Friendster* photos of herself wearing an "off-shouldered" suggestive dress and made this available for public viewing.

To restate the rule: in communicating and socializing through social networks, judges must bear in mind that what they communicate – regardless of whether it is a personal matter or

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[46] Universal Declaration of Human Rights, Article 19.

part of his or her judicial duties – creates and contributes to the people's opinion not just of the judge but of the entire Judiciary of which he or she is a part. This is especially true when the posts the judge makes are viewable not only by his or her family and close friends, but by acquaintances and the general public.

Thus, it may be acceptable for the respondent to show a picture of herself in the attire she wore to her family and close friends, but when she made this picture available for public consumption, she placed herself in a situation where she, and the status she holds as a judge, may be the object of the public's criticism and ridicule. The nature of cyber communications, particularly its speedy and wide-scale character, renders this rule necessary.

We are not also unaware that the respondent's act of posting her photos would seem harmless and inoffensive had this act been done by an ordinary member of the public. As the visible personification of law and justice, however, **judges are held to higher standards of conduct and thus must accordingly comport themselves**.[47]

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[47] In foreign jurisdiction, the respective committees on judicial ethics in some states of the United States of America have issued opinions on the application of their respective rules on judicial conduct to the judges' acts of joining and maintaining accounts in online social networking sites.

The *California Judges Association, Judicial Ethics Committee, Opinion 66 On Online Social Networking* states that[s]ocial networking sites typically allow users to post photos and videos onto the user's pages. The user may also add links to other Internet sites and indicate favorable or unfavorable reviews of products, websites and public figures. **When utilizing such features of social networking sites, judges must always be mindful that they have a duty to act at all times in a manner that promotes public confidence in the integrity of the judiciary** (Canon 2A) and must refrain from any extrajudicial activities that demean the judiciary (Canon 4A). **Online activities that would be permissible and appropriate for a member of the general public may be improper for a judge.** While it may be acceptable for a college student to post photographs of himself or herself engaged in a drunken revelry, it is not appropriate for a judge to do so.

Canon 5A prohibits judges from publicly endorsing or opposing any candidate for non-judicial office. Canon 5B prohibits a judge from engaging in "any political activity other than in relation to measures concerning the

improvement of the law, the legal system, or the administration of justice." By their very nature, statements posted on social networking sites are public. Therefore, it would be inappropriate to endorse or oppose candidates for non-judicial office on a social networking site. In addition, using features of a site could constitute political activity. For example, creating links to political organizations or posting a comment on a proposed legislative measure would be improper. *(Source: http://www.caljudges.org/files/pdf/Opinion%2066FinalShort.pdf)*

The Ethics Committee of the Kentucky Judiciary, in its Formal Judicial Ethics Opinion JE-119 dated January 20, 2010, opined that **"**the Committee is compelled to note that, as with any public media, social networking sites are fraught with peril for judges, and that this opinion should not be construed as an explicit or implicit statement that judges may participate in such sites in the same manner as members of the general public. **Personal information, commentary and pictures are frequently part of such (social networking) sites.** Judges are required to establish, maintain and enforce high standards of conduct, and to personally observe those standards (Canon). In addition, judges shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary (Canon).

Thus, pictures and commentary posted on sites which might be of questionable taste, but otherwise acceptable for members of the general public, may be inappropriate for judges. See In re: Complaint of Judicial Misconduct, 575 F. 3d279 (3rdCir.2009) (interpreting federal Judicial Conduct and Disability Act) (publically reprimanding a judge who had maintained a website containing sexually explicit and offensive materials). In its decision, the Third Circuit Court of Appeals noted [a] judge's conduct may be judicially imprudent, even if it is legally defensible (575 F.3d at 291) *(Source: http://courts.ky.gov/commissionscommittees/JEC/JEC_Opinions/JE_119.pdf)*

The *New York Judicial Ethics Committee Opinion 08-176* states that "[t]he Rules require that a judge must avoid impropriety and the appearance of impropriety in all of the judge's activities (and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. Similarly, **a judge shall conduct all of the judge's extra-judicial activities so that they do not detract from the dignity of judicial office** (*see* 22 NYCRR 100.4[A][2]).

What a judge posts on his/her profile page or on other users' pages **could potentially violate the Rules in several ways**. Xxx **A judge should thus recognize the public nature of anything he/she places on a social network page and tailor any postings accordingly.** *(Source: http://www.courts.state.ny.us/ip/judicialethics/opinions/08-176.htm)*

This exacting standard applies **both to acts involving the judicial office and personal matters**. The very nature of their functions requires behavior under exacting standards of morality, decency and propriety; both in the performance of their duties and their daily personal lives, they should be beyond reproach.[48] Judges necessarily accept this standard of conduct when they take their oath of office as magistrates.

Imposable Penalty

Under Section 8, Rule 140 of the Rules of Court, as amended by A.M. No. 01-8-10-SC, gross ignorance of the law or procedure is classified as a serious charge. Under Section 11(A) of the same Rule, a serious charge merits any of the following sanctions:

1. Dismissal from the service, forfeiture of all or part of the benefits as the Court may determine, and disqualification from reinstatement or appointment to any public office, including government-owned or controlled corporations; provided, however, that the forfeiture of benefits shall in no case include accrued leave credits;

2. Suspension from office without salary and other benefits for more than three (3), but not exceeding six (6), months; or

3. A fine of more than ₱20,000.00, but not exceeding ₱40,000.00.

On the other hand, conduct unbecoming of a judge is classified as a light offense under Section 10, Rule 140 of the Rules of Court. It is penalized under Section 11(C) thereof by any of the following: (1) A fine of not less than ₱1,000.00 but not exceeding ₱10,000.00; (2) Censure; (3) Reprimand; and (4) Admonition with warning.

Judge Austria's record shows that she had never been administratively charged or found liable for any wrongdoing in the past. Since this is her first offense, the Court finds it fair and proper to temper the penalty for her offenses.

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[48] *Gacad v. Clapis, Jr., supra* note 38, at 550.

WHEREFORE, the Court finds Judge Ma. Cecilia I. Austria guilty of **GROSS IGNORANCE OF THE LAW** for which she is **FINED** Twenty-One Thousand Pesos (₱21,000,00)**.** Judge Austria is likewise hereby **ADMONISHED** to refrain from further acts of **IMPROPRIETY** and to refrain from **CONDUCT UNBECOMING OF A JUDGE,** with the **STERN WARNING** that a repetition of the same or similar acts shall be dealt with more severely.

SO ORDERED.

Carpio (Chairperson), del Castillo, Villarama, Jr., and *Reyes, JJ.,* concur.

SECOND DIVISION

[G.R. No. 175750-51. April 02, 2014]

SILVERINA E. CONSIGNA, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES, THE HON. SANDIGANBAYAN (THIRD DIVISION), and EMERLINA MOLETA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; DISTINGUISHED FROM *CERTIORARI*.— With regard to the period to file a petition, in Rule 45, the period within which to file is fifteen (15) days from notice of the judgment or final order or resolution appealed from. In contrast to Rule 65, the petition should be filed not later than sixty (60) days from notice of the judgment, order or resolution. Regarding the subject matter, a review on *certiorari* under Rule 45 is generally limited to the review of legal issues; the Court only resolves questions of law which have been properly raised by the parties during the appeal and in the petition. A Rule 65

review, on the other hand, is strictly confined to the determination of the propriety of the trial court's jurisdiction — whether it has jurisdiction over the case and if so, whether the exercise of its jurisdiction has or has not been attended by grave abuse of discretion amounting to lack or excess of jurisdiction. Otherwise stated, errors of judgment are the proper subjects of a Rule 45 petition; errors of jurisdiction are addressed in a Rule 65 petition. The special civil action of *certiorari* under Rule 65 is resorted to only in the absence of appeal or any plain, speedy and adequate remedy in the ordinary course of law. So when appeal, or a petition for review is available, *certiorari* cannot be resorted to; *certiorari* is not a substitute for a lapsed or lost appeal. A Rule 65 *certiorari* petition cannot be a substitute for a Rule 45 petition so as to excuse the belatedness in filing the correct petition. Where an appeal is available, *certiorari* will not prosper, even if the ground therefor is grave abuse of discretion. Grave abuse of discretion means "such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction, or, in other words where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and it must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.

2. REMEDIAL LAW; CRIMINAL PROCEDURE; INFORMATION; THE ACTUAL RECITAL OF THE FACTS THEREIN DETERMINE THE REAL NATURE OF THE CRIMINAL CHARGE.— Entrenched in jurisprudence is the dictum that the real nature of the criminal charge is determined not from the caption or preamble of the information, or from the specification of the provision of law alleged to have been violated, which are mere conclusions of law, but by the actual recital of the facts in the complaint or information.

3. CRIMINAL LAW; ESTAFA BY MEANS OF DECEIT; ELEMENTS.— The law explicitly provides that in the prosecution for Estafa under par. (2)(a), Art. 315 of the RPC, it is indispensable that the element of deceit, consisting in the false statement or fraudulent representation of the accused, be made prior to, or at least simultaneously with the commission of the fraud, it being essential that such false statement or representation constitutes the very cause or the only motive

which induced the offended party to part with his money. x x x The elements of estafa by means of deceit, whether committed by false pretenses or concealment, are the following: (a) there must be a false pretense, fraudulent act, or fraudulent means; (b) such false pretense, fraudulent act or fraudulent means must be made or executed prior to or simultaneously with the commission of the fraud; (c) the offended party must have relied on the false pretense, fraudulent act, or fraudulent means, that is, he was induced to part with his money or property because of the false pretense, fraudulent act, or fraudulent means; and (d) as a result thereof, the offended party suffered damage.

4. ID.; ANTI-GRAFT AND CORRUPT PRACTICES ACT (RA 3019); ELEMENTS FOR VIOLATION OF SEC. 3(E) THEREOF; ACCUSED WAS A PUBLIC OFFICER DISCHARGING OFFICIAL FUNCTIONS; APPRECIATED IN CASE AT BAR.— The following are the essential elements of violation of Sec. 3(e) of RA 3019: 1. The accused must be a public officer discharging administrative, judicial or official functions; 2. He must have acted with manifest partiality, evident bad faith or inexcusable negligence; and 3. That his action caused any undue injury to any party, including the government, or giving any private party unwarranted benefits, advantage or preference in the discharge of his functions. There is no doubt that petitioner, being a municipal treasurer, was a public officer discharging official functions when she misused such position to be able to take out a loan from Moleta, who was misled into the belief that petitioner, as municipal treasurer, was acting on behalf of the municipality. x x x In this case, it was not only alleged in the Information, but was proved with certainty during trial that the manner by which petitioner perpetrated the crime necessarily relates to her official function as a municipal treasurer. Petitioner's official function created in her favor an impression of authority to transact business with Moleta involving government financial concerns. There is, therefore, a direct relation between the commission of the crime and petitioner's office – the latter being the very reason or consideration that led to the unwarranted benefit she gained from Moleta, for which the latter suffered damages in the amount of ₱320,000.00. It was just fortunate that Rusillon instructed the bank to stop payment of the checks issued by petitioner, lest, the victim could have been the Municipality of General Luna. x x x Given the above disquisition, it becomes superfluous

to dwell further on the issue raised by petitioner that Sec. 3(e) applies only to officers and employees of offices or government corporations charged with the grant of licenses or other concessions. Nonetheless, to finally settle the issue, the last sentence of the said provision is not a restrictive requirement which limits the application or extent of its coverage. This has long been settled in our ruling in *Mejorada v. Sandiganbayan*, where we categorically declared that a prosecution for violation of Sec. 3(e) of the Anti-Graft Law will lie regardless of whether or not the accused public officer is "charged with the grant of licenses or permits or other concessions."

5. ID.; ID.; ID.; TWO WAYS TO VIOLATE SEC. 3(E) OF RA 3019; CAUSING UNDUE INJURY TO ANY PARTY COMMITTED WITH EVIDENT BAD FAITH; CASE AT BAR.— As regards the two other elements, the Court explained in *Cabrera v. Sandiganbayan* that there are two (2) ways by which a public official violates Sec. 3(e) of R.A. No. 3019 in the performance of his functions, namely: (a) by causing undue injury to any party, including the Government; or (b) by giving any private party any unwarranted benefits, advantage or preference. The accused may be charged under either mode or under both. This was reiterated in *Quibal v. Sandiganbayan*, where the Court held that the use of the disjunctive term "or" connotes that either act qualifies as a violation of Sec. 3(e) of R.A. No. 3019. In this case, petitioner was charged of violating Sec. 3(e) of R.A. No. 3019 under the alternative mode of "causing undue injury" to Moleta committed with evident bad faith, for which she was correctly found guilty. "Evident bad faith" connotes not only bad judgment but also palpably and patently fraudulent and dishonest purpose to do moral obliquity or conscious wrongdoing for some perverse motive or ill will. "Evident bad faith" contemplates a state of mind affirmatively operating with furtive design or with some motive of self-interest or ill will or for ulterior purposes, which manifested in petitioner's actuations and representation. The inevitable conclusion is that petitioner capitalized on her official function to commit the crimes charged. Without her position, petitioner would not have induced Moleta to part with her money. In the same vein, petitioner could not have orchestrated a scheme of issuing postdated checks meddling with the municipality's coffers and defiling the mayor's signature.

APPEARANCES OF COUNSEL

Eugenia Borlas for petitioner.
The Solicitor General for public respondent.
Paul Jomar S. Alcudia for private respondent.

D E C I S I O N

PEREZ, *J.:*

For review on *certiorari* is the Decision[1] of the Honorable Sandiganbayan dated 12 December 2006, finding Silverina E. Consigna (petitioner) guilty for violation of Section 3(e) of Republic Act (R.A.) No. 3019, otherwise known as Anti-Graft and Corrupt Practices Act, and Estafa, as defined and penalized under Article 315 (2)(a) of the Revised Penal Code (RPC).

The facts as culled from the records are as follows:

On or about 14 June 1994, petitioner, the Municipal Treasurer of General Luna, Surigao del Norte, together with Jose Herasmio, obtained as loan from private respondent Hermelina Moleta (Moleta), the sum of ₱320,000.00, to pay for the salaries of the employees of the municipality and to construct the municipal gymnasium as the municipality's Internal Revenue Allotment (IRA) had not yet arrived. As payment, petitioner issued three (3) Land Bank of the Philippines (LBP) checks signed by Jaime Rusillon (Rusillon), the incumbent mayor of the Municipality of General Luna: (1) Check No. 11281104 for ₱130,000.00 dated 14 June 1994; (2) Check No. 9660500 for ₱130,000.00 dated 14 June 1994; and (3) Check No. 9660439 for ₱60,000.00 dated 11 July 1994.

Between 15 June 1994 and 18 August 1994, in several attempts on different occasions, Moleta demanded payment from petitioner and Rusillon, but to no avail.

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[1] Penned by Associate Justice Efren N. De La Cruz, with Associate Justices Godofredo L. Legaspi and Norberto Y. Geraldez concurring; *rollo*, pp. 30-67.

Thus, on 18 August 1994, Moleta deposited the three (3) LBP checks to her account in Metrobank-Surigao Branch. Upon presentation for payment, Metrobank returned the checks to Moleta as the checks had no funds. The following day, Moleta again deposited the checks. This time, however, she deposited the checks to her LBP account. Upon presentation for payment, the checks were again returned for the reason, "*Signature Not on File*." Upon verification, LBP informed Moleta that the municipality's account was already closed and transferred to Development Bank of the Philippines, and that petitioner, the municipal treasurer, has been relieved from her position.

Hence, Moleta filed with the Sandiganbayan two (2) sets of Information against petitioner, in the latter's capacity as Municipal Treasurer and Rusillon, in his capacity as Municipal Mayor of General Luna, Surigao del Norte, to wit:

(1) Criminal Case No. 24182 — Sec. 3(e) of R.A. 3019, otherwise known as Anti-Graft and Corrupt Practices Act:

That on or about 15 June 1994, or sometime after said date, at the General Luna, Surigao del Norte, and within the jurisdiction of this Honorable Court accused Municipal Treasurer Silverina Consigna (with Salary Grade below 27), and Municipal Mayor Jaime Rusillon (with Salary Grade 27) did then and there, willfully and unlawfully, with evident bad faith, in cooperation with each other, and taking advantage of their official positions and in the discharge for the functions as such, borrow the amount of ₱320,000.00 from one Emerlina Moleta to whom they misrepresented to be for the municipality of General Luna, when in fact the same is not; and fail to pay back said amount thereby causing undue injury to said Emerlina Moleta in the amount of ₱320,000.00.[2]

(2) Criminal Case No. 24183 — Art. 315 of the RPC, otherwise known as Estafa:

That on or about 15 June 1994, or sometime after said date, at the General Luna, Surigao del Norte, and within the jurisdiction of this Honorable Court, accused Municipal Treasurer Silverina Consigna

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[2] *Id*. at 30-31.

(with Salary Grade below 27), and Municipal Mayor Jaime Rusillon (with Salary Grade 27), did then and there, willfully and unlawfully, with evident bad faith, in cooperation with each other, representing themselves to be transacting in behalf of the [M]unicipality of Gen. Luna, in truth and in fact they are not, contract a loan from one Emerlina Moleta in the amount of ₱320,000.00 for which they issued three (3) checks: LBP Check No. 11281104 dated 14 June 1994 in the amount of ₱130,000.00, LBP Check No. 9660500 dated 14 June 1994 in the amount of ₱130,000.00, and LBP Check no. 9660439 dated 11 July 1994 in the amount of ₱60,000.00, all in favor of said Emerlina Moleta, knowing fully well that the account belongs to the Municipality of the (sic) Gen. Luna, and that they have no personal funds [of] the same account such that upon presentation of the said checks to the bank, the same were dishonored and refused payment, to the damage and prejudice of said Emerlina Moleta in the amount of ₱320,000.00.[3]

As defense, petitioner argued that the court *a quo* has no jurisdiction because (1) the crime as charged did not specify the provision of law allegedly violated, *i.e.*, the specific type of Estafa; and (2) Sec. 3(e) of RA 3019 does not fall within the jurisdiction of the court *a quo* because the offense as charged can stand independently of public office and public office is not an element of the crime.[4]

The court *a quo* admitted that the Information for violation of Estafa did not specify the provision of law allegedly violated.[5] However, based on the allegations of deceit and misrepresentation, the court *a quo* allowed the prosecution to indict petitioner and Rusillon under Art. 315 (2)(a) of the RPC.

On the charge of graft and corruption, petitioner argued that, "[w]hen allegations in the information do not show that the official position of the [petitioner] was connected with the offense charged, the accused is not charged with an offense in relation to her

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[3] *Id*. at 31.

[4] *Id*. at 20.

[5] *Id*. at 61.

official functions."[6] Petitioner, citing *Lacson v. The Executive Secretary*,[7] further argued:

> x x x [M]ere allegation in the information "that the offense was committed by the accused public officer in relation to his office is not sufficient. That phrase is a mere conclusion of law not a factual averment that would show the close intimacy between the offense charged and the discharge of accused's official duties."[8]

Petitioner also contends that there was no fraud or misrepresentation. By demanding payment from Rusillon, Moleta attested that there exists no fraud or misrepresentation. In petitioner's words, "… why will she [Moleta] insist payment from [Rusillon] if she has no knowledge that the money loaned have reached him?"[9]

On the other hand, Rusillon maintained that he had no participation in the acts committed by petitioner. Based on his testimony, he signed the three (3) checks to pay the following: (1) payroll of the following day; (2) daily expenses of the municipal building; (3) construction of the municipal gymnasium; and (4) health office's medical supplies.[10] As found by the court *a quo*, "the only link of Rusillon to [petitioner] with respect to the loan transaction is his signature on the three (3) checks which [petitioner] used as security to Moleta."[11]

After trial, the Sandiganbayan, on 12 December 2006, found petitioner guilty, but exonerated Rusillon. The dispositive portion of the Decision reads:[12]

> WHEREFORE, in view of the foregoing, judgment is hereby rendered as follows:

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[6] *Id.* at 20.

[7] 361 Phil. 251 (1999).

[8] *Id*. at 282; *rollo* p. 20.

[9] *Rollo*, p. 25.

[10] TSN, 24 May 2005, pp. 9-12.

[11] *Rollo*, p. 59.

[12] *Id*. at 66-67.

(1) In **Criminal Case No. 24182**, accused SILVERINA E. CONSIGNA is found GUILTY beyond reasonable doubt of violation of Section 3(e) of the Republic Act No. 3019, and is hereby SENTENCED to suffer the penalty of imprisonment of six (6) years and one (1) month to eight (8) years.

Accused JAIME RUSILLON is ACQUITTED for failure of the prosecution to prove his guilt with moral certainty.

(2) In Criminal Case No. 24183, accused SILVERINA E. CONSIGNA is found GUILTY beyond reasonable doubt of Estafa under Article 315 (2)(a) of the Revised Penal Code, and is hereby SENTENCED to the indeterminate prison term of six (6) years and one (1) day of *prision mayor* as MINIMUM, to twenty (20) years of *reclusion temporal* as MAXIMUM.

Accused JAIME RUSILLON is ACQUITTED as his guilt was not proven with moral certainty.

(3) Accused SILVERIA E. CONSIGNA is ordered to pay private complainant Emerlina F. Moleta the amount of PhP368,739.20 by way of actual damages; PhP30,000.00 as moral damages, and the costs of suit; and

(4) The hold departure order against accused JAIME RUSILLON in connection with these cases is hereby LIFTED.

Hence, this Petition.

Noticeably, the petitioner formulated its arguments, thus:

a. The court *a quo* committed grave abuse of discretion in making its finding of facts which amounts to lack of jurisdiction.

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b. The court *a quo* committed grave abuse of discretion when it convicted the accused on "false pretense, fraudulent act or means" made or executed prior to or simultaneously with the commission of fraud.

x x x x x x x x x

c. The court *a quo* committed grave abuse of discretion when it made a conclusion that the petitioner acted with manifest partiality, evident bad faith or inexcusable negligence to justify its conclusion

that all the elements of violations of Section 3(e) of RA 3019 are present."[13]

Preliminarily, We here note a common disorder in petitions that mingle the concepts involved in a Petition for Review under Rule 45 and in the special civil action of *certiorari* under Rule 65, as a prevalent practice of litigants to cure a lapsed appeal.

We shall discuss the distinction.

With regard to the period to file a petition, in Rule 45, the period within which to file is fifteen (15) days from notice of the judgment or final order or resolution appealed from.[14] In contrast to Rule 65, the petition should be filed not later than sixty (60) days from notice of the judgment, order or resolution.[15]

Regarding the subject matter, a review on *certiorari* under Rule 45 is generally limited to the review of legal issues; the Court only resolves questions of law which have been properly raised by the parties during the appeal and in the petition.[16] A Rule 65 review, on the other hand, is strictly confined to the determination of the propriety of the trial court's jurisdiction — whether it has jurisdiction over the case and if so, whether the exercise of its jurisdiction has or has not been attended by grave abuse of discretion amounting to lack or excess of jurisdiction.[17] Otherwise stated, errors of judgment are the proper subjects of a Rule 45 petition; errors of jurisdiction are addressed in a Rule 65 petition.

The special civil action of *certiorari* under Rule 65 is resorted to only in the absence of appeal or any plain, speedy and adequate remedy in the ordinary course of law.[18] So when appeal, or a

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[13] *Id.* at 19-27.

[14] Rules of Court, Rule 45, Section 2.

[15] Rules of Court, Rule 65, Section 4.

[16] Rules of Court, Rule 45, Section 1.

[17] Rules of Court, Rule 65, Section 1.

[18] *Id.*

petition for review is available, *certiorari* cannot be resorted to; *certiorari* is not a substitute for a lapsed or lost appeal.[19] A Rule 65 *certiorari* petition cannot be a substitute for a Rule 45 petition so as to excuse the belatedness in filing the correct petition. Where an appeal is available, *certiorari* will not prosper, even if the ground therefor is grave abuse of discretion.[20]

Grave abuse of discretion means "such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction, or, in other words where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and it must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.[21]

Petitioner was correct when she filed a Petition for Review under Rule 45. However, instead of raising errors of judgment as a proper subject of a petition for review under Rule 45, the petition formulated jurisdictional errors purportedly committed by the court *a quo*, *i.e.*, whether or not the court *a quo* committed grave abuse of discretion,[22] which is the proper subject of a Petition for *Certiorari* under Rule 65. Noticeably, the petition does not allege any bias, partiality or bad faith by the court *a quo* in its proceedings;[23] and the petition does not raise a denial of due process in the proceedings before the Sandiganbayan.[24]

Importantly, however, the petition followed the period specified in Rule 45. It was timely filed. For that reason, we excuse the repeated referral to the supposed grave abuse of discretion of

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[19] *Spouses Dycoco v. CA*, G.R. No. 147257, 31 July 2013.

[20] *Id*.

[21] *Freedom from Debt Coalition v. Energy Regulatory Commission*, 476 Phil. 134, 214 (2004).

[22] *Rollo*, pp. 19-27.

[23] *Mandy Commodities Co., Inc., v. International Commercial Bank of China*, G.R. No. 166734, 3 July 2009, 591 SCRA 579, 587-588.

[24] *Ysidoro v. Leonardo-De Castro*, G.R. Nos. 171513 and 190963, 6 February 2012, 665 SCRA 1, 15-16.

the Sandiganbayan and treat the petition as, nonetheless, one for review of the questioned decision. We thus recast the arguments as:

I. Whether or not the court *a quo* committed a reversible error for finding petitioner guilty of estafa, based on information which does not specifically designate the provision allegedly violated.

II. Whether or not petitioner is guilty of estafa as penalized under Art. 315 (2)(a) of the RPC.

III. Whether or not petitioner is guilty of Sec. 3 (e) of RA 3019.

The Petition must fail.

1. On the first issue, petitioner insists that even if the court *a quo* already admitted that the Information failed to specifically identify the mode or manner by which estafa was committed by petitioner, it nonetheless went on to convict her by relying on the allegation in the Information of deceit and misrepresentation and applying par. (2)(a), Art. 315 of the RPC.

Entrenched in jurisprudence is the dictum that the real nature of the criminal charge is determined not from the caption or preamble of the information, or from the specification of the provision of law alleged to have been violated, which are mere conclusions of law, but by the actual recital of the facts in the complaint or information.[25] As held in *People v. Dimaano*:[26]

For complaint or information to be sufficient, it must state the name of the accused; the designation of the offense given by the statute; the acts or omissions complained of as constituting the offense; the name of the offended party; the approximate time of the commission of the offense, and the place wherein the offense was committed. **What is controlling is not the title of the complaint, nor the designation of the offense charge or the particular law or part thereof allegedly violated, these being mere conclusions**

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[25] *People v. Valdez*, G.R. No. 175602, 18 January 2012, 663 SCRA 272, 286-287, citing *Lacson v. Executive Secretary*, supra note 7 at 279.

[26] 506 Phil. 630, 649-650 (2005).

of law made by the prosecutor, but the description of the crime charged and the particular facts therein recited. The acts or omissions complained of must be alleged in such form as is sufficient to enable a person of common understanding to know what offense is intended to be charged, and enable the court to pronounce proper judgment. No information for a crime will be sufficient if it does not accurately and clearly allege the elements of the crime charged. Every element of the offense must be stated in the information. What facts and circumstances are necessary to be included therein must be determined by reference to the definitions and essentials of the specified crimes. The requirement of alleging the elements of a crime in the information is to inform the accused of the nature of the accusation against him so as to enable him to suitably prepare his defense. The presumption is that the accused has no independent knowledge of the facts that constitute the offense. (Emphasis supplied)

As early in *United States v. Lim San*,[27] this Court has determined that:

From a legal point of view, and in a very real sense, it is of no concern to the accused what is the technical name of the crime of which he stands charged. It in no way aids him in a defense on the merits. x x x. That to which his attention should be directed, and in which he, above all things else, should be most interested, are the facts alleged. **The real question is not did he commit a crime given in the law some technical and specific name, but did he perform the acts alleged in the body of the information in the manner therein set forth. If he did, it is of no consequence to him, either as a matter of procedure or of substantive right, how the law denominates the crime which those acts constitute. The designation of the crime by name in the caption of the information from the facts alleged in the body of that pleading is a conclusion of law made by the fiscal. In the designation of the crime the accused never has a real interest until the trial has ended. For his full and complete defense he need not know the name of the crime at all. It is of no consequence whatever for the protection of his substantial rights. The real and important question to him is, "Did you perform the acts alleged in the manner alleged?" not "Did you commit a crime named murder." If he performed the acts alleged, in the manner stated, the law**

[27] 17 Phil. 273, 278-279 (1910).

determines what the name of the crime is and fixes the penalty therefor. It is the province of the court alone to say what the name of the crime is or what it is named. x x x. (Emphasis and underscoring supplied)

Petitioner's argument is as outdated as it is erroneous. The averments in the two (2) sets of Information against petitioner and Rusillon clearly stated facts and circumstances constituting the elements of the crime of estafa as to duly inform them of the nature and cause of the accusation, sufficient to prepare their respective defenses.

2. Contrary to the submission of petitioner, false pretense and fraudulent acts attended her transaction with Moleta. The law explicitly provides that in the prosecution for Estafa under par. (2)(a), Art. 315 of the RPC, it is indispensable that the element of deceit, consisting in the false statement or fraudulent representation of the accused, be made prior to, or at least simultaneously with the commission of the fraud, it being essential that such false statement or representation constitutes the very cause or the only motive which induced the offended party to part with his money. Paragraph 2(a), Art. 315 of the RPC provides:

Art. 315. Swindling (estafa). — Any person who shall defraud another by any of the means mentioned hereinbelow x x x:

x x x x x x x x x

2. By means of any of the following false pretenses or fraudulent acts executed prior to or simultaneously with the commission of the fraud:

x x x x x x x x x

(a) By using fictitious name, or falsely pretending to possess power, influence, qualifications, property, credit, agency, business or imaginary transactions, or by means of other similar deceits.

x x x x x x x x x

The elements of estafa by means of deceit, whether committed by false pretenses or concealment, are the following: (a) there must be a false pretense, fraudulent act or fraudulent means; (b) such false pretense, fraudulent act or fraudulent means must

be made or executed prior to or simultaneously with the commission of the fraud; (c) the offended party must have relied on the false pretense, fraudulent act or fraudulent means, that is, he was induced to part with his money or property because of the false pretense, fraudulent act or fraudulent means; and (d) as a result thereof, the offended party suffered damage.[28]

As borne by the records, petitioner's representations were outright distortions of the truth perpetrated for the sole purpose of inducing Moleta to hand to her the amount of ₱320,000.00 purportedly for the Municipality of General Luna. Being the Municipal Treasurer, there was reason for Moleta to rely on petitioner's representations that money is needed for the payment of the employees' salary as well as for the construction of the gymnasium. There was also a ring of truth to the deception that the share of the municipality from the IRA is forthcoming. Added to this, petitioner's representations were even supported by the issuance of three (3) LBP checks to guarantee payment taken from the account of the municipality and signed by no less than the municipal mayor, giving the impression that the loaned amount would indeed be utilized for public purposes.

As the court *a quo* correctly observed:

> It is undisputed that Consigna obtained a loan from Moleta for the reason that the municipality lacked funds for the June 15, 1994 payroll of the employees and materials of the gymnasium. However, several circumstances point to the fact that Consigna's representation has no basis. She contradicted her own testimony that at the time she borrowed from Moleta on June 14, 1994, the municipality suffered a shortage of funds, with her admission that when she was relieved as a municipal treasurer, the Municipality had more than 1 million in Land Bank from the IRA of ₱600,000.00 a month for the past three months x x x. This means that when she left her post before the second week of July x x x, the municipality had money from the April to June 1994 IRA, enough to meet the need of ₱320,000.00. x x x[29]

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[28] *R.R. Paredes v. Calilung*, 546 Phil. 198, 223 (2007).

[29] *Rollo*, pp. 55-56.

The circumstances and the reason behind the issuance of the three (3) checks given to Moleta by petitioner was testified to by Rusillon:

> He was the incumbent mayor of the Municipality of General Luna, Surigao del Norte, in 1994. In the morning of June 14, 1994, he received the amount of ₱268,800.00 from accused Consigna, as evidenced by a voucher (Exh. 1) signed by him on the same day. The money was to be used for the purchase of materials for the gymnasium of the municipality which construction started in 1992. After signing the voucher, he ordered Consigna to prepare a check for ₱130,000.00 (Exh. 2) for the June 15, 1994 payroll of the municipality's employees. After the check was prepared, he again ordered Consigna to make another two checks, one for ₱130,000.00 (Exh. 3) dated June 14, 1994 intended for the expenses of the municipal building and for the daily transactions of the municipality in the following days, and the other check was for ₱60,000.00 (Exh. 4) dated July 11, 1994 for the purchase of medicines for the municipality's health office. The latter check was postdated to July because it would be charged against the IRA in the 3rd quarter of 1994 since they bought medicines at that time on a quarterly basis as the budget allowed only ₱240,000.00 per year for such expenditure."[30]

3. Anent the issue on the alleged grave abuse of discretion amounting to lack of jurisdiction committed by the court *a quo* when it took cognizance of Criminal Case No. 24182, charging petitioner for "taking advantage of her official position and the discharge of the functions as such," petitioner averred that the charge was erroneous because borrowing of money is not a function of a Municipal Treasurer under the Local Government Code. Petitioner asserts that the last sentence of Sec. 3(e) of RA 3019 cannot cover her.

We find such reasoning misplaced.

The following are the essential elements of violation of Sec. 3(e) of RA 3019:

1. The accused must be a public officer discharging administrative, judicial or official functions;

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[30] *Id.* at 48.

2. He must have acted with manifest partiality, evident bad faith or inexcusable negligence; and

3. That his action caused any undue injury to any party, including the government, or giving any private party unwarranted benefits, advantage or preference in the discharge of his functions.[31]

There is no doubt that petitioner, being a municipal treasurer, was a public officer discharging official functions when she misused such position to be able to take out a loan from Moleta, who was misled into the belief that petitioner, as municipal treasurer, was acting on behalf of the municipality.

In *Montilla v. Hilario*,[32] this Court described the "offense committed in relation to the office" as:

[T]he relation between the crime and the office contemplated by the Constitution is, in our opinion, direct and not accidental. To fall into the intent of the Constitution, the relation has to be such that, in the legal sense, the offense cannot exist without the office. In other words, the office must be a constituent element of the crime as defined in the statute, such as, for instance, the crimes defined and punished in Chapter Two to Six, Title Seven, of the Revised Penal Code.

Public office is not of the essence of murder. The taking of human life is either murder or homicide whether done by a private citizen or public servant, and the penalty is the same except when the perpetrator, being a public functionary took advantage of his office, as alleged in this case, in which event the penalty is increased.

But the use or abuse of office does not adhere to the crime as an element; and even as an aggravating circumstance, **its materiality arises not from the allegations but on the proof, not from the fact that the criminals are public officials but from the manner of the commission of the crime.** (Emphasis supplied)

In this case, it was not only alleged in the Information, but was proved with certainty during trial that the manner by which

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[31] *Cabrera v. Sandiganbayan*, 484 Phil. 350, 360 (2004), citing *Jacinto v. Sandiganbayan*, 387 Phil. 872, 881 (2000).

[32] 90 Phil. 49, 51 (1951).

petitioner perpetrated the crime necessarily relates to her official function as a municipal treasurer. Petitioner's official function created in her favor an impression of authority to transact business with Moleta involving government financial concerns. There is, therefore, a direct relation between the commission of the crime and petitioner's office – the latter being the very reason or consideration that led to the unwarranted benefit she gained from Moleta, for which the latter suffered damages in the amount of ₱320,000.00. It was just fortunate that Rusillon instructed the bank to stop payment of the checks issued by petitioner, lest, the victim could have been the Municipality of General Luna.

As regards the two other elements, the Court explained in *Cabrera v. Sandiganbayan*[33] that there are two (2) ways by which a public official violates Sec. 3(e) of R.A. No. 3019 in the performance of his functions, namely: (a) by causing undue injury to any party, including the Government; or (b) by giving any private party any unwarranted benefits, advantage or preference. The accused may be charged under either mode or under both.[34] This was reiterated in *Quibal v. Sandiganbayan*,[35] where the Court held that the use of the disjunctive term "or" connotes that either act qualifies as a violation of Sec. 3(e) of R.A. No. 3019.

In this case, petitioner was charged of violating Sec. 3(e) of R.A. No. 3019 under the alternative mode of "causing undue injury" to Moleta committed with evident bad faith, for which she was correctly found guilty. "Evident bad faith" connotes not only bad judgment but also palpably and patently fraudulent and dishonest purpose to do moral obliquity or conscious wrongdoing for some perverse motive or ill will. "Evident bad faith" contemplates a state of mind affirmatively operating with furtive design or with some motive of self-interest or ill will or

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[33] *Supra* note 31.

[34] *Velasco v. Sandiganbayan*, 492 Phil. 669, 677 (2005).

[35] 314 Phil. 66 (1995).

for ulterior purposes,[36] which manifested in petitioner's actuations and representation.

The inevitable conclusion is that petitioner capitalized on her official function to commit the crimes charged. Without her position, petitioner would not have induced Moleta to part with her money. In the same vein, petitioner could not have orchestrated a scheme of issuing postdated checks meddling with the municipality's coffers and defiling the mayor's signature. As correctly found by the court *a quo*:

> x x x Likewise worthy of stress is [petitioner's] failure to establish that the amount she disbursed to Rusillon came from the money she loaned from Moleta. If indeed the ₱268,800.00 advanced to Rusillon was charged against the loan, then, this should have been reflected in the municpality's books of of accounts. The same is true with the ₱32,000.00 and the ₱32,000,00 given to Moleta if the proceeds of the loan really went to the municipality's treasury. It is a standard accounting procedure that every transaction must be properly entered in the books of accounts of the municipality. A cash that comes in is a debit to the asset account and every loan incurred is a credit to the liability account.[37]

Given the above disquisition, it becomes superfluous to dwell further on the issue raised by petitioner that Sec. 3(e) applies only to officers and employees of offices or government corporations charged with the grant of licenses or other concessions. Nonetheless, to finally settle the issue, the last sentence of the said provision is not a restrictive requirement which limits the application or extent of its coverage. This has long been settled in our ruling in *Mejorada v. Sandiganbayan*,[38] where we categorically declared that a prosecution for violation of Sec. 3(e) of the Anti-Graft Law will lie regardless of whether or not the accused public officer is "charged with the grant of licenses or permits or other concessions." Quoted hereunder is an excerpt from *Mejorada*:[39]

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[37] *Rollo*, pp. 57-58.

[38] 235 Phil. 400 (1987).

[39] *Id.* at 407-408.

Section 3 cited above enumerates in eleven subsections the corrupt practices of any public officers (sic) declared unlawful. Its reference to "any public officer" is without distinction or qualification and it specifies the acts declared unlawful. We agree with the view adopted by the Solicitor General that the last sentence of paragraph [Section 3] (e) is intended to make clear the inclusion of officers and employees of officers (sic) or government corporations which, under the ordinary concept of "public officers" may not come within the term. **It is a strained construction of the provision to read it as applying exclusively to public officers charged with the duty of granting licenses or permits or other concessions.** (Emphasis and underscoring supplied)

The above pronouncement was reiterated in *Cruz v. Sandiganbayan*,[40] where the Court affirmed the *Mejorada* ruling that finally puts to rest any erroneous interpretation of the last sentence of Sec. 3(e) of the Anti-Graft Law.

All the elements of the crimes as charged are present in the case at bar. All told, this Court finds no justification to depart from the findings of the lower court. Petitioner failed to present any cogent reason that would warrant a reversal of the Decision assailed in this petition.

WHEREFORE, the petition is **DENIED**. The Decision of the Sandiganbayan in Criminal Case No. 24182-83 is **AFFIRMED** *in toto*.

SO ORDERED.

Carpio (Chairperson), Brion, del Castillo, and *Perlas-Bernabe, JJ.,* concur.

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[40] 504 Phil. 321 (2005).

SECOND DIVISION

[G.R. No. 179155. April 02, 2014]

NICOMEDES J. LOZADA, *petitioner, vs.* **EULALIA BRACEWELL, EDDIE BRACEWELL, ESTELLITA BRACEWELL, JAMES BRACEWELL, JOHN BRACEWELL, EDWIN BRACEWELL, ERIC BRACEWELL, and HEIRS OF GEORGE BRACEWELL,** *respondents.*

SYLLABUS

REMEDIAL LAW; JURISDICTION; LAND REGISTRATION; PROPER VENUE FOR REAL ACTIONS SUCH AS APPLICATION FOR ORIGINAL REGISTRATION FALLS WITHIN THE JURISDICTION OF THE COURTS OF FIRST INSTANCE (now RTCs) OF THE PROVINCE OR CITY WHERE THE LAND IS *SITUATED*; APPLIED IN CASE AT BAR.— The land registration laws were updated and codified under PD 1529, which took effect on January 23, 1979, and under Section 17 thereof, jurisdiction over an application for land registration is still vested on the **CFI (now, RTC) of the province or city where the land is situated**. x x x **Section 32 of PD 1529** provides that the review of a decree of registration falls within the jurisdiction of and, hence, should be filed in the "proper Court of First Instance." x x x While it is indeed undisputed that it was the RTC of Makati City, Branch 134 which rendered the decision directing the LRA to issue Decree No. N-217036, and should, be the same court before which a petition for the review of Decree No. N-217036 is filed, the Court must consider the circumstantial milieu in this case that, in the interest of orderly procedure, warrants the filing of the said petition before the Las Piñas City-RTC. Particularly, the Court refers to the fact that the application for original registration in this case was only filed before the RTC of Makati City, Branch 134 because, during that time, *i.e.*, December 1976, Las Piñas City had no RTC. Barring this situation, the aforesaid application should not have been filed before the RTC of Makati City, Branch 134 pursuant to the rules on venue prevailing at that time. Under

> Section 2, Rule 4 of the 1964 Revised Rules of Court, which took effect on January 1, 1964, the proper venue for real actions, such as an application for original registration, lies with the CFI of the province where the property is situated. x x x As the land subject of this case is undeniably situated in Las Piñas City, the application for its original registration should have been filed before the Las Piñas City-RTC were it not for the fact that the said court had yet to be created at the time the application was filed. Be that as it may, and considering further that the complication at hand is **actually one of venue and not of jurisdiction** (given that RTCs do retain jurisdiction over review of registration decree cases pursuant to Section 32 of PD 1529), the Court, cognizant of the peculiarity of the situation, holds that **the Las Piñas City-RTC has the authority over the petition for the review of Decree No. N-217036 filed in this case**. Indeed, the filing of the petition for review before the Las Piñas City-RTC was only but a rectificatory implementation of the rules of procedure then-existing, which was temporarily set back only because of past exigencies. In light of the circumstances now prevailing, the Court perceives no compelling reason to deviate from applying the rightful procedure. After all, venue is only a matter of procedure and, hence, should succumb to the greater interests of the orderly administration of justice.

APPEARANCES OF COUNSEL

Stephen L. Monsanto for petitioner.
Wenceslao V. Jarin for respondents.

D E C I S I O N

PERLAS -BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] are the Decision[2] dated May 23, 2007 and the Resolution[3] dated August

[1] *Rollo*, pp. 8-43.

[2] *Id*. at 179-191. Penned by Associate Justice Aurora Santiago-Lagman, with Associate Justices Bienvenido L. Reyes (now, member of the Court) and Apolinario D. Bruselas, Jr. concurring.

[3] *Id*. at 202-203.

14, 2007 of the Court of Appeals (CA) in CA-G.R. CV No. 81075, which affirmed the Decision[4] dated July 31, 2003 of the Regional Trial Court (RTC) of Las Piñas City, Branch 275 in Civil Case No. LP 98-0025, directing the Land Registration Authority (LRA) to set aside Decree of Registration No. N-217036 (Decree No. N-217036) and Original Certificate of Title (OCT) No. 0-78 in the name of petitioner Nicomedes J. Lozada (petitioner), and ordering the latter to cause the amendment of Plan PSU-129514 as well as segregate therefrom Lot 5 of Plan PSU-180598.

The Facts

On December 10, 1976, petitioner filed an application for registration and confirmation of title over a parcel of land covered by **Plan PSU-129514**, which was granted on **February 23, 1989** by the **RTC of Makati City**, **Branch 134**, acting as a land registration court.[5] Consequently, on July 10, 1997, the LRA issued Decree No. N-217036 in the name of petitioner, who later obtained OCT No. 0-78 covering the said parcel of land.[6]

On February 6, 1998, within a year from the issuance of the aforementioned decree, James Bracewell, Jr. (Bracewell) filed **a petition for review of a decree of registration under Section 32 of Presidential Decree No. (PD) 1529**,[7] otherwise known as the "Property Registration Decree," before the **RTC of Las Piñas City**, **Branch 275** (Las Piñas City-RTC), docketed as Civil Case No. LP 98-0025,[8] claiming that a portion of **Plan PSU-129514**, consisting of 3,097 square meters identified as **Lot 5 of Plan PSU-180598** (subject lot) – of which he is the absolute owner and possessor – is fraudulently included in Decree No. N-217036.[9] He allegedly filed on September 19, 1963 an

[4] *Id*. at 102-107. Penned by Judge Bonifacio Sanz Maceda.

[5] *Id*. at 104.

[6] *Id*.

[7] Entitled "Amending And Codifying The Laws Relative To Registration Of Property And For Other Purposes."

[8] *Rollo*, pp. 45-51.

[9] *Id*. at 47.

application for registration and confirmation of the subject lot, as well as of Lots 1, 2, 3, and 4 of Plan PSU-180598, situated in Las Piñas City, which was granted by the **RTC of Makati City**, **Branch 58**, on **May 3, 1989**.[10] He further averred that petitioner deliberately concealed the fact that he (Bracewell) is one of the adjoining owners, and left him totally ignorant of the registration proceedings involving the lots covered by Plan PSU-129514.[11] Instead of impleading him, petitioner listed Bracewell's grandmother, Maria Cailles, as an adjoining owner, although she had already died by that time.[12]

In his answer[13] to the foregoing allegations, petitioner called Bracewell a mere interloper with respect to the subject lot, which the Bureau of Lands had long declared to be part and parcel of Plan PSU-129514.[14] He argued that his Plan PSU-129514 was approved way back in 1951 whereas Bracewell's Plan PSU-180598 was surveyed only in 1960, and stated that the latter plan, in fact, contained a footnote that a portion known as Lot 5, *i.e.*, the subject lot, is a portion of the parcel of land covered by Plan PSU-129514.[15]

The overlapping was confirmed by LRA Director Felino M. Cortez in his 2nd Supplementary Report dated August 5, 1996, which was submitted to the RTC of Makati City, Branch 134.[16] The report, which contains a recommendation that petitioner be ordered to cause the amendment of Plan PSU-129514 in view of Bracewell's claims, reads as follows:

COMES NOW the Land Registration Authority (LRA) and to the Honorable Court respectfully submits this report:

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[10] *Id*. at 46-47.

[11] *Id*. at 48-49.

[12] *Id*. at 48.

[13] *Id*. at 71-73.

[14] *Id*. at 72.

[15] *Id*. at 71.

[16] *Id*. at 104.

1. LRA records show that a decision was rendered by the Honorable Court on February 23, 1989, confirming the title of the herein applicant [petitioner] over the parcel of land covered by plan PSU-129514;

2. Upon updating of plotting on our Municipal Index Sheet, thru its tie line, it was found to overlap with plan PSU-180598, Lot 5, applied in LRC Record No. N-24916, which was referred to the Lands Management Services, El Bldg., Quezon City, for verification and/or correction in our letter dated January 12, 1996 x x x;

3. In reply, the Regional Technical Director, thru the Chief, Surveys Division, in his letter dated 20 June 1996, x x x, informed this Authority that after [re-verification] and research of the plan, they found out that Lot 5, PSU-180598 applied in LRC Record No. N-24916 is a portion of plan PSU-129514, applied in the instant case;

4. Our records further show that **the petition for registration of title to real property pertaining to Lot 5, PSU-180598 filed by the petitioner James Bracewell, Jr. under Land Reg. Case No. N-4329, LRC Record No. N-24916 has been granted by the Honorable Court per his decision dated May 3, 1989**.

WHEREFORE, the foregoing is respectfully submitted to the Honorable Court for its information **with the recommendation that the applicant [herein petitioner] in the instant case be ordered to cause for the amendment of plan PSU-129514, subject of registration, by segregating therefrom the portion of Lot 5, PSU-180598 also decided in Land Reg. Case No. N-4328**. The approved amended plan and the corresponding certified technical descriptions shall forthwith be submitted to the Honorable Court for its approval to enable us to comply with the decision of the Court dated May 3, 1989 in the instant case.[17] (Emphases supplied)

The Las Piñas City-RTC Ruling

Finding that petitioner obtained Decree No. N-217036 and OCT No. 0-78 in bad faith, the Las Piñas City-RTC rendered a Decision[18]

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[17] *Id*. at 105.

[18] *Id*. at 102-107.

on July 31, 2003 in favor of Bracewell, who had died during the pendency of the case and was substituted by Eulalia Bracewell and his heirs (respondents). Accordingly, it directed the LRA to set aside Decree No. N-217036 and OCT No. 0-78, and ordered petitioner (*a*) to cause the amendment of Plan PSU-129514 and to segregate therefrom the subject lot, and (*b*) to pay respondents the sum of ₱100,000.00 as attorney's fees, as well as the cost of suit.[19]

The Las Piñas City-RTC faulted petitioner for deliberately preventing respondents from participating and objecting to his application for registration when the documentary evidence showed that, as early as 1962, Bracewell had been paying taxes for the subject lot; and that he (Bracewell) was recognized as the owner thereof in the records of the Bureau of Lands way back in 1965, as well as in the City Assessor's Office.[20]

Aggrieved, petitioner elevated his case on appeal[21] before the CA, docketed as CA-G.R. CV No. 81075, arguing mainly that the Las Piñas City-RTC had no jurisdiction over a petition for review of a decree of registration under Section 32 of PD 1529, which should be filed in the same branch of the court that rendered the decision and ordered the issuance of the decree.[22] He likewise raised (*a*) the failure of Bracewell to submit to conciliation proceedings,[23] as well as (*b*) the commission of forum shopping, considering that the decision granting Bracewell's application for registration over Lots 1, 2, 3, 4, and 5 of Plan PSU-180598 was still pending resolution before the Court at the time he filed Civil Case No. LP 98-0025.[24]

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[19] *Id*. at 107.

[20] *Id*. at 106.

[21] *Id*. at 109-152. Appellant's Brief dated August 15, 2004.

[22] *Id*. at 121-122.

[23] *Id*. at 137-139.

[24] *Id*. at 139-140.

The CA Ruling

In a Decision[25] dated May 23, 2007, the appellate court affirmed the assailed judgment of the RTC, finding that respondents were able to substantiate their claim of actual fraud in the procurement of Decree No. N-217036, which is the only ground that may be invoked in a petition for review of a decree of registration under Section 32 of PD 1529. It held that, since the petition for review was filed within one (1) year from the issuance of the questioned decree, and considering that the subject lot is located in Las Piñas City, the RTC of said city had jurisdiction over the case.[26] It further declared that: (*a*) there was no need to submit the case *a quo* for conciliation proceedings because the LRA, which is an instrumentality of the government, had been impleaded; (*b*) no forum shopping was committed because the petition for review of the decree of registration before the Las Piñas City-RTC and the application for land registration then pending before the Court involved different parties and issues; and (*c*) the award of attorney's fees was well within the sound discretion of the RTC.[27]

Petitioner's motion for reconsideration[28] having been denied,[29] he now comes before the Court *via* the instant petition for review, challenging primarily the jurisdiction of the Las Piñas City-RTC which set aside and nullified the judgment rendered by the RTC of Makati City, Branch 134 that had not yet become final and was still within its exclusive control and discretion because the one (1) year period within which the decree of registration issued by the LRA could be reviewed has not yet elapsed.[30]

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[25] *Id*. at179-191.

[26] *Id*. at 185-186.

[27] *Id*. at 186-187 and 190.

[28] Dated June 7, 2007; *id.* at 192-201.

[29] *Id*. at 202.

[30] *Id*. at 9.

The Issue Before the Court

The core issue raised for the Court's resolution is whether or not the Las Piñas City-RTC has jurisdiction over the petition for review of Decree No. N-217036, which was issued as a result of the judgment rendered by the RTC of Makati City, Branch 134.

The Court's Ruling

The petition must fail.

Under Act No. 496[31] (Act 496), or the "Land Registration Act," as amended,[32] – which was the law in force at the time of the commencement by both parties of their respective registration proceedings – jurisdiction over all applications for registration of title was conferred upon the Courts of First Instance (CFIs, now RTCs) of the respective **provinces in which the land sought to be registered is situated**.[33]

The land registration laws were updated and codified under PD 1529, which took effect on January 23, 1979,[34] and under Section 17[35] thereof, jurisdiction over an application for land

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[31] Entitled "AN ACT TO PROVIDE FOR THE ADJUDICATION AND REGISTRATION OF TITLES TO LANDS IN THE PHILIPPINE ISLANDS."

[32] As amended by Act No. 2347, entitled "AN ACT TO PROVIDE FOR THE REORGANIZATION OF THE COURTS OF FIRST INSTANCE AND OF THE COURT OF LAND REGISTRATION."

[33] See *City of Dumaguete v. Philippine Ports Authority*, G.R. No. 168973, August 24, 2011, 656 SCRA 102, 120.

[34] *Esconde v. Hon. Barlongay*, 236 Phil. 644, 651 (1987).

[35] Section 17. *What and where to file.* The application for land registration shall be filed with the Court of First Instance of the province or city where the land is situated. The applicant shall file together with the application all original muniments of titles or copies thereof and a survey plan of the land approved by the Bureau of Lands.

The clerk of court shall not accept any application unless it is shown that the applicant has furnished the Director of Lands with a copy of the application and all annexes.

registration is still vested on the **CFI (now, RTC) of the province or city where the land is situated**.[36]

Worth noting is the explanation proffered by respondents in their comment to the instant petition that when petitioner filed his land registration case in December 1976, jurisdiction over applications for registration of property situated in Las Piñas City was vested in the RTC of Makati City in view of the fact that there were no RTC branches yet in the Las Piñas City at that time.[37] Bracewell's own application over Lots 1, 2, 3, 4, and 5 of Plan PSU-180598, all situated in Las Piñas City, was thus granted by the RTC of Makati City, Branch 58.[38]

Subsequently, Batas Pambansa Bilang (BP) 129,[39] otherwise known as "The Judiciary Reorganization Act of 1980," was enacted and took effect on August 14, 1981,[40] authorizing the creation of RTCs in different judicial regions, including the RTC of Las Piñas City as part of the National Capital Judicial Region.[41] As pointed out by the court *a quo* in its Decision dated July 31, 2003, the RTC of Las Piñas City was established "in or about 1994."[42] Understandably, in February 1998, Bracewell sought the review of Decree No. N-217036 before the Las Piñas City-RTC, considering that the lot subject of this case is situated in Las Piñas City.

Petitioner maintains that the petition for review should have been filed with the RTC of Makati City, Branch 134, which rendered the assailed decision and ordered the issuance of Decree

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[36] See *City of Dumaguete v. Philippine Ports Authority*, supra note 33, at120-121.

[37] *Rollo*, p. 242.

[38] *Id*. at 46-47.

[39] Entitled "AN ACT REORGANIZING THE JUDICIARY, APPROPRIATING FUNDS THEREFOR, AND FOR OTHER PURPOSES."

[40] *Tomawis v. Balindong*, G.R. No. 182434, March 5, 2010, 614 SCRA 354, 364.

[41] BP 129, Chapter II, Sec. 13.

[42] *Rollo*, p. 105.

No. N-217036, citing the 1964 case of *Amando Joson, et al. v. Busuego*[43] (*Joson*) among others. In said case, Spouses Amando Joson and Victoria Balmeo (Sps. Joson) filed a petition to set aside the decree of registration issued in favor of Teodora Busuego (Busuego) on the ground that the latter misrepresented herself to be the sole owner of the lot when in truth, the Sps. Joson were owners of one-half thereof, having purchased the same from Busuego's mother.[44] The court *a quo* therein dismissed the petition for the reason that since its jurisdiction as a cadastral court was special and limited, it had no authority to pass upon the issues raised. Disagreeing, the Court held that, as long as the final decree has not been issued and the period of one (1) year within which it may be reviewed has not elapsed, the decision remains under the control and sound discretion of the court rendering the decree, which court after hearing, may even set aside said decision or decree and adjudicate the land to another.[45]

To be clear, the only issue in *Joson* was which court should take cognizance of the nullification of the decree, *i.e.*, the cadastral court that had issued the decree, or the competent CFI in the exercise of its general jurisdiction.[46] **It should be pointed out, however, that with the passage of PD 1529, the distinction between the general jurisdiction vested in the RTC and the limited jurisdiction conferred upon it as a cadastral court was eliminated**. RTCs now have the power to hear and determine all questions, even contentious and substantial ones, arising from applications for original registration of titles to lands and petitions filed after such registration.[47] Accordingly, and considering further that the matter of whether the RTC resolves an issue in the exercise of its general jurisdiction or of its limited jurisdiction as a special court is only a matter of procedure and has nothing

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[43] 120 Phil 1473 (1964).

[44] *Id.* at 1474.

[45] *Id.* at 1476.

[46] *Id.* at 1475.

[47] See *Philippine National Bank v. International Corporate Bank*, 276 Phil. 551, 558-559 (1991).

to do with the question of jurisdiction,[48] petitioner cannot now rely on the *Joson* pronouncement to advance its theory.

Section 32 of PD 1529 provides that the review of a decree of registration falls within the jurisdiction of and, hence, should be filed in the "proper Court of First Instance," *viz.*:

> Section 32. *Review of decree of registration; Innocent purchaser for value.* The decree of registration shall not be reopened or revised by reason of absence, minority, or other disability of any person adversely affected thereby, nor by any proceeding in any court for reversing judgments, subject, however, to the right of any person, including the government and the branches thereof, deprived of land or of any estate or interest therein by such adjudication or confirmation of title obtained by actual fraud, **to file in the proper Court of First Instance a petition for reopening and review of the decree of registration not later than one year from and after the date of the entry of such decree of registration**, but in no case shall such petition be entertained by the court where an innocent purchaser for value has acquired the land or an interest therein, whose rights may be prejudiced. Whenever the phrase "innocent purchaser for value" or an equivalent phrase occurs in this Decree, it shall be deemed to include an innocent lessee, mortgagee, or other encumbrancer for value.
>
> Upon the expiration of said period of one year, the decree of registration and the certificate of title issued shall become incontrovertible. Any person aggrieved by such decree of registration in any case may pursue his remedy by action for damages against the applicant or any other persons responsible for the fraud. (Emphasis and underscoring supplied)

Since the LRA's issuance of a decree of registration only proceeds from the land registration court's directive, a petition taken under Section 32 of PD 1529 is effectively a review of the land registration court's ruling. As such, case law instructs that for "as long as a final decree has not been entered by the [LRA] and the period of one (1) year has not elapsed from the

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[48] See *Manalo v. Hon. Mariano*, 161 Phil. 108, 120 (1976), citations omitted. See also *Romero v. CA*, G.R. No. 188921, April 18, 2012, 670 SCRA 218, 227, citing *Coca v. Borromeo*, 171 Phil. 246 (1978).

date of entry of such decree, the title is not finally adjudicated and the decision in the registration proceeding continues to be under the control and sound discretion of the court rendering it."[49]

While it is indeed undisputed that it was the RTC of Makati City, Branch 134 which rendered the decision directing the LRA to issue Decree No. N-217036, and should, applying the general rule as above-stated, be the same court before which a petition for the review of Decree No. N-217036 is filed, the Court must consider the circumstantial milieu in this case that, in the interest of orderly procedure, warrants the filing of the said petition before the Las Piñas City-RTC.

Particularly, the Court refers to the fact that the application for original registration in this case was only filed before the RTC of Makati City, Branch 134 because, during that time, *i.e.*, December 1976, Las Piñas City had no RTC. Barring this situation, the aforesaid application should not have been filed before the RTC of Makati City, Branch 134 pursuant to the rules on venue prevailing at that time. Under Section 2, Rule 4 of the 1964 Revised Rules of Court, which took effect on January 1, 1964, the proper venue for real actions, such as an application for original registration, lies with the CFI of the province where the property is situated, *viz.*:

> Sec. 2. *Venue in Courts of First Instance.— (a) Real actions.—* Actions affecting title to, or for recovery of possession, or for partition or condemnation of, or foreclosure of mortgage on, real property, shall be commenced and tried in the province where the property or any part thereof lies.

As the land subject of this case is undeniably situated in Las Piñas City, the application for its original registration should have been filed before the Las Piñas City-RTC were it not for the fact that the said court had yet to be created at the time the application was filed. Be that as it may, and considering further that the complication at hand is **actually one of venue and not of jurisdiction** (given that RTCs do retain jurisdiction over review of registration decree cases pursuant to Section 32 of

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[49] *Atty. Gomez v. CA*, 250 Phil. 504, 510 (1988).

PD 1529), the Court, cognizant of the peculiarity of the situation, holds that **the Las Piñas City-RTC has the authority over the petition for the review of Decree No. N-217036 filed in this case**. Indeed, the filing of the petition for review before the Las Piñas City-RTC was only but a rectificatory implementation of the rules of procedure then-existing, which was temporarily set back only because of past exigencies. In light of the circumstances now prevailing, the Court perceives no compelling reason to deviate from applying the rightful procedure. After all, venue is only a matter of procedure[50] and, hence, should succumb to the greater interests of the orderly administration of justice.[51]

Anent the other ancillary issues raised by petitioner on forum shopping, submission to conciliation proceedings, and award of attorney's fees, suffice it to say that the same have been adequately discussed by the appellate court and, hence, need no further elucidation.

Finally, on the matter of petitioner's objections against the trial judge's "unusual interest" in the case, the Court concurs with the CA in saying that such tirades are not helpful to his cause. Besides, as pointed out in the Decision dated July 31, 2003 of the RTC of Makati City, Branch 275, petitioner already had his chance to disqualify the trial judge from further hearing the case, but the appellate court dismissed his petition in CA G.R. SP No. 74187 for lack of merit.[52]

WHEREFORE, the petition is **DENIED**. The Decision dated May 23, 2007 and the Resolution dated August 14, 2007 of the Court of Appeals in CA-G.R. CV No. 81075 are hereby **AFFIRMED**.

SO ORDERED.

Carpio (Chairperson), Brion, del Castillo, and *Perez, JJ.*, concur.

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[50] See *Heirs of Lopez v. De Castro*, 381 Phil. 591, 610 (2000).

[51] *See Vallacar Transit, Inc. v. Yap*, 211 Phil. 641, 643 (1983).

[52] *Rollo*, p. 103.

SECOND DIVISION

[G.R. No. 179260. April 2, 2014]

COMMISSIONER OF INTERNAL REVENUE, *petitioner, vs.* **TEAM [PHILIPPINES] OPERATIONS CORPORATION [formerly MIRANT (PHILS) OPERATIONS CORPORATION],** *respondent.*

SYLLABUS

1. TAXATION; REFUND CLAIM OR ISSUANCE OF TAX CREDIT CERTIFICATE; CONDITIONS THAT MUST BE COMPLIED WITH.— In order to be entitled to a refund claim or issuance of a tax credit certificate representing any excess or unutilized creditable withholding tax, it must be shown that the claimant has complied with the essential basic conditions set forth under pertinent provisions of law and existing jurisprudential declarations. In *Banco Filipino Savings and Mortgage Bank v. Court of Appeals*, this Court had previously articulated that there are three essential conditions for the grant of a claim for refund of creditable withholding income tax, to wit: (1) the claim is filed with the Commissioner of Internal Revenue within the two-year period from the date of payment of the tax; (2) it is shown on the return of the recipient that the income payment received was declared as part of the gross income; and (3) the fact of withholding is established by a copy of a statement duly issued by the payor to the payee showing the amount paid and the amount of the tax withheld therefrom. The *first* condition is pursuant to Sections 204(C) and 229 of the NIRC of 1997. x x x The *second* and *third* conditions are anchored on Section 2.58.3(B) of Revenue Regulations No. 2-98. x x x In addition to the abovementioned requisites, the NIRC of 1997, as amended, likewise provides for the strict observance of the concept of the *irrevocability rule*, the focal provision of which is Section 76 thereof.

2. REMEDIAL LAW; APPEALS; FINDINGS AND CONCLUSIONS OF THE COURT OF TAX APPEALS (CTA), RESPECTED.— [T]he findings and conclusions of the CTA are accorded the highest respect and will not be lightly set aside. The CTA, by the very nature of its functions, is dedicated

exclusively to the resolution of tax problems and has accordingly developed an expertise on the subject unless there has been an abusive or improvident exercise of authority. Consequently, its conclusions will not be overturned unless there has been an abuse or improvident exercise of authority. Its findings can only be disturbed on appeal if they are not supported by substantial evidence or there is a showing of gross error or abuse on the part of the Tax Court. In the absence of any clear and convincing proof to the contrary, this Court must presume that the CTA rendered a decision which is valid in every respect.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Jose R. Matibag for respondent.

D E C I S I O N

PEREZ, *J.*:

Before the Court is a Petition for Review on *Certiorari* seeking to reverse and set aside the 19 June 2007 Decision[1] and the 13 August 2007 Resolution[2] of the Court of Tax Appeals (CTA) *En Banc* in C.T.A. EB No. 224 which affirmed *in toto* the Decision and Resolution dated 4 August 2006 and 8 November 2006, respectively, of the First Division of the CTA (CTA in Division)[3] in C.T.A. Case No. 6623, granting Team (Philippines) Operations Corporation's (respondent) claim for refund in the amount of ₱69,562,412.00 representing unutilized tax credits for taxable period ending 31 December 2001.

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[1] *Rollo*, pp. 46-57; Penned by Associate Justice Caesar A. Casanova with Presiding Justice Ernesto D. Acosta, Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Erlinda P. Uy and Olga Palanca-Enriquez concurring.

[2] *Id*. at 59-61.

[3] CTA in Division *rollo*, pp. 456-465 and 486-488, respectively; Chaired by Presiding Justice Ernesto D. Acosta with Associate Justices Lovell R. Bautista and Caesar A. Casanova as members.

The Facts

The factual antecedents of the case are undisputed:

Petitioner is the duly appointed Commissioner of Internal Revenue, charged with the duty of enforcing the provisions of the National Internal Revenue Code (NIRC), including the power to decide and approve administrative claims for refund.

Respondent, on the other hand, is a corporation duly organized and existing under and virtue of the laws of the Republic of the Philippines, with its principal office at Bo. Ibabang Pulo, Pagbilao Grande Island, Pagbilao, Quezon Province. It is primarily engaged in the business of designing, constructing, erecting, assembling, commissioning, operating, maintaining, rehabilitating and managing gas turbine and other power generating plants and related facilities for the conversion into electricity of coal, distillate and other fuels provided by and under contract with the Government of the Republic of the Philippines, or any subdivision, instrumentality or agency thereof, or any government owned or controlled corporations or other entity engaged in the development, supply or distribution of energy.

On 30 April 2001, respondent secured from the Securities and Exchange Commission (SEC) its Certificate of Filing of Amended Articles of Incorporation, reflecting its change of name from Southern Energy Asia-Pacific Operations (Phils.), Inc. to Mirant (Philippines) Operations Corporation. Prior to its use of the name Southern Energy Asia-Pacific Operations (Phils.), Inc., respondent operated under the corporate names CEPA Operations (Philippines) Corporation, CEPA Tileman Project Management Corporation and Hopewell Tileman Project Management Corporation. The changes in respondent's corporate name from CEPA Operations (Philippines) Corp. to Southern Energy Asia-Pacific Operations (Phils.) Inc., from CEPA Tileman Project Management Corporation to CEPA Operations (Philippines) Corp. and from Hopewell Tileman Project Management Corporation to CEPA Tileman Project Management Corp., were approved by the SEC on 24 November 2000, 21 November 1997 and 29 July 1994, respectively.

Under its original corporate name, Hopewell Tileman Project Management Corp., respondent was registered with the Bureau of Internal Revenue (BIR) with Tax Identification No. 003-057-796 as shown by its original BIR Certificate of Registration issued on 29 March 1994.

In line with its primary purpose, respondent entered into Operating and Management Agreements with Mirant Pagbilao Corporation (MPC) [formerly Southern Energy Quezon, Inc.] and Mirant Sual Corporation (MSC) [formerly Southern Energy Pangasinan, Inc.] to provide MPC and MSC with operation and maintenance services in connection with the operation, construction and commissioning of the coal-fired thermal power stations situated in Pagbilao, Quezon and Sual, Pangasinan, respectively. Payments received by respondent from MPC and MSC relative to the said agreements were allegedly subjected to creditable withholding taxes.

On 15 April 2002, respondent filed its 2001 income tax return with the BIR, reporting an income tax overpayment in the amount of ₱69,562,412.00 arising from unutilized creditable taxes withheld during the year, detailed as follows:[4]

Sales/Revenues	₱ 922,569,303.00
Less: Cost of Sales/Services	938,543,252.00
Gross Income from Operation	₱ 15,973,949.00)
Add: Non-Operating & Other Income	74,995,982.00
Total Gross Income	₱ 59,022,033.00
Less: Deductions	59,022,033.00
Taxable Income	-
Tax Rate	32%
Income Tax	NIL
Less: Tax Credits/Payments	
Creditable Tax Withheld for the First Three Quarters	₱ 27,784,217.00
Creditable Tax Withheld for the Fourth Quarter	41,778,195.00
Total Tax Credits/Payments	₱ 69,652,412.00
Tax Payable/(Overpayment)	**(₱ 69,562,412.00)**

[4] *Rollo*, p. 48.

Respondent marked the appropriate box manifesting its intent to have the above overpayment refunded.

On 19 March 2003, pursuant to Section 76 in relation to Section 204 of the NIRC of 1997, as amended, respondent filed with the BIR, a letter requesting for the refund or issuance of a tax credit certificate corresponding to its reported unutilized creditable withholding taxes for taxable year 2001 in the amount of ₱69,562,412.00.

Thereafter, on 27 March 2003, respondent filed a Petition for Review before the CTA, in order to toll the running of the two-year prescriptive period provided under Section 229 of the NIRC of 1997, as amended, which was docketed as C.T.A. Case No. 6623.

The Ruling of the CTA in Division

In a Decision dated 4 August 2006,[5] the CTA in Division granted respondent's Petition and ordered petitioner to refund or issue a tax credit certificate in favor of the former the entire amount of ₱69,562,412.00, representing its unutilized tax credits for the taxable year ended 31 December 2001.

The CTA in Division based its ruling on the numerous documentary evidence presented by respondent during the proceedings, such as its Income Tax Returns (ITRs) for taxable years 2001 and 2002, various Certificates of Creditable Tax Withheld at Source for taxable year 2001 duly issued to it by its withholding agents, and Report of the Commissioned Independent Certified Public Accountant dated 15 March 2004, among others. The court *a quo* reasoned that respondent has indeed established its entitlement to a refund/tax credit of its excess creditable withholding taxes in compliance with the following basic requirements: (1) that the claim for refund (or issuance of a tax credit certificate) was filed within the two-year prescriptive period prescribed under Section 204(C), in relation to Section 229 of the NIRC of 1997, as amended; (2) that the fact of withholding is established by a copy of a statement

[5] CTA in Division *rollo*, pp. 456-465.

duly issued by the payor (withholding agent) to the payee, showing the amount paid and the amount of tax withheld therefrom; and (3) that the income upon which the taxes were withheld was included in the return of the recipient.[6]

Subsequently, on 8 November 2006, the CTA in Division denied petitioner's Motion for Reconsideration for lack of merit.[7]

Aggrieved, petitioner appealed to the CTA *En Banc* by filing a Petition for Review pursuant to Section 18 of Republic Act (RA) No. 1125, as amended by RA No. 9282[8] on 6 December 2006, docketed as CTA EB No. 224.

The Ruling of the CTA En Banc

The CTA *En Banc* affirmed *in toto* both the aforesaid Decision and Resolution rendered by the CTA in Division in CTA Case No. 6623, pronouncing that there was no cogent reason to disturb the findings and conclusion spelled out therein. It revealed that what the petition seeks to accomplish was for the CTA *En Banc* to view and appreciate the evidence in another perspective, which unfortunately had already been considered and passed upon correctly by the CTA in Division.

Upon denial of petitioner's Motion for Reconsideration of the 19 June 2007 Decision[9] of the CTA *En Banc*, it filed this Petition for Review on *Certiorari* before this Court seeking the reversal of the aforementioned Decision and the 13 August 2007 Resolution[10]

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[6] *Id*. at 462.

[7] *Id*. at 486-488.

[8] RA No. 1125, otherwise known as "An Act Creating the Court of Tax Appeals," as amended by RA No. 9282, also known as "An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), Elevating its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging its Membership, Amending for the Purpose Certain Sections of Republic Act No. 1125, As Amended, Otherwise Known As the Law Creating the Court of Tax Appeals, and for Other Purposes," which took effect on 23 April 2004.

[9] *Rollo*, pp. 9-20.

[10] *Id*. at 22-24.

rendered in CTA EB No. 224. Petitioner[11] relies on the sole ground that the CTA *En Banc* gravely erred on a question of law in affirming the CTA in Division's ruling which ordered a refund or issuance of tax credit certificate in favor of respondent despite the fact that it is not supported by the evidence on record.[12]

The Issue and Our Ruling

The core issue for the Court's resolution is whether or not respondent has established its entitlement for the refund or issuance of a tax credit certificate in its favor the entire amount of ₱69,562,412.00 representing its unutilized tax credits for taxable year ended 31 December 2001, pursuant to the applicable provisions of the NIRC of 1997, as amended.

This is not novel.

In order to be entitled to a refund claim or issuance of a tax credit certificate representing any excess or unutilized creditable withholding tax, it must be shown that the claimant has complied with the essential basic conditions set forth under pertinent provisions of law and existing jurisprudential declarations.

In *Banco Filipino Savings and Mortgage Bank v. Court of Appeals*,[13] this Court had previously articulated that there are three essential conditions for the grant of a claim for refund of creditable withholding income tax, to wit: (1) the claim is filed with the Commissioner of Internal Revenue within the two-year period from the date of payment of the tax;[14] (2) it is shown on the return of the recipient that the income payment received

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[11] *Id*. at 189-190. On 23 March 2009, this Court has resolved to note and grant respondent's motion to change caption of this case to reflect the new corporate name of respondent to "*Commissioner of Internal Revenue vs. Team (Philippines) Operations Corporation.*" (Underscoring supplied)

[12] *Id*. at 33.

[13] 548 Phil. 32, 36-37 (2007). See also *Commissioner of Internal Revenue v. Far East Bank & Trust Company (now Bank of the Philippine Islands)*, G.R. No. 173854, 15 March 2010, 615 SCRA 417, 424.

[14] Jose C. Vitug and Ernesto D. Acosta, *Tax Law and Jurisprudence*, 329 (2006) citing *Gibb v. Collector*, 107 Phil. 230 (1960).

was declared as part of the gross income;[15] and (3) the fact of withholding is established by a copy of a statement duly issued by the payor to the payee showing the amount paid and the amount of the tax withheld therefrom.

The *first* condition is pursuant to Sections 204(C) and 229 of the NIRC of 1997, as amended, *viz*:

SEC. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* — The Commissioner may –

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(C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction.

No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty: *Provided, however,* That a return filed showing an overpayment shall be considered as a written claim for credit or refund. (Emphasis supplied)

x x x x x x x x x

SEC. 229. *Recovery of Tax Erroneously or Illegally Collected.* — No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, **until a claim for refund or credit has been duly filed with the Commissioner**; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.

In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or

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[15] *Calamba Steel Center, Inc. v. Commissioner of Internal Revenue*, 497 Phil. 23, 32 (2005).

penalty regardless of any supervening cause that may arise after payment: *Provided, however*, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid. (Emphasis supplied)

The *second* and *third* conditions are anchored on Section 2.58.3(B) of Revenue Regulations No. 2-98,[16] which states:

Sec. 2.58.3.Claim for Tax Credit or Refund

x x x x x x x x x

(B) Claims for tax credit or refund of any creditable income tax which was deducted and withheld on income payments shall be given due course **only when it is shown that the income payment has been declared as part of the gross income and the fact of withholding is established by a copy of the withholding tax statement duly issued by the payor to the payee showing the amount paid and the amount of tax withheld therefrom**. (Emphasis supplied)

In addition to the abovementioned requisites, the NIRC of 1997, as amended, likewise provides for the strict observance of the concept of the *irrevocability rule*,[17] the focal provision

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[16] SUBJECT: Implementing Republic Act No. 8424, *"An Act Amending The National Internal Revenue Code, as Amended"* Relative to the Withholding on Income Subject to the Expanded Withholding Tax and Final Withholding Tax, Withholding on Income Tax on Compensation, Withholding of Creditable Value-Added Tax and Other Percentage Taxes.

[17] Section 76 gives two options to a taxable corporation who is entitled to a tax credit or refund of the excess income taxes paid in a given taxable year, namely: (1) to carry-over the excess credit to the quarters of the succeeding taxable years; or (2) to apply for the issuancne of a tax credit certificate or to claim a cash refund. However, once the option to xarry over has been made, such shall be irrevocable for that taxable period and no application for cash refund or issuance of tax credit certificate shall be allowed. This is known as the irrevocability rule. (See *Philam Asset Management, Inc. v. Commissioner of Internal Revenue*, 514 Phi. 147, 162 [2005]).

It bears emphasis that the operation of the *irrevocability rule* not only removes from the taxpayer the option for cash refund or tax credit, after the taxpayer opts to carry-over its excess tax credit to the following taxable period, the question of whether or not it actually gets to apply said tax credit does not matter. Section 76 of the NIRC of 1997 is explicit in stating that once the

of which is Section 76 thereof, quoted hereunder for easy reference:

SEC. 76. *Final Adjustment Return*. — Every corporation liable to tax under Section 27 shall file a final adjustment return covering the total taxable income for the preceding calendar or fiscal year. If the sum of the quarterly tax payments made during the said taxable year is not equal to the total tax due on the entire taxable income of that year, the corporation shall either:

(A) Pay the balance of tax still due; or
(B) Carry-over the excess credit; or
(C) Be credited or refunded with the excess amount paid, as the case may be.

In case the corporation is entitled to a tax credit or refund of the excess estimated quarterly income taxes paid, the excess amount shown on its final adjustment return may be carried over and credited against the estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable years. **Once the option to carry-**

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option to carry over has been made, "no application for tax refund or issuance of a tax credit certificate shall be allowed therefor." In other words, once the carry-over option is taken, actually or constructively, it becomes irrevocable. The aforesaid section mentioned no exception or qualification to the irrevocability rule. (See *Commissioner of Internal Revenue v. Bank of the Philippine Islands*, G.R. No. 178490, 7 July 2009, 592 SCRA 219, 231).

Furthermore, the last sentence of Section 76, which mentioned of the phrase "for that taxable period", merely identifies the excess income tax, subject of the option, by referring to the taxable period when it was acquired by the taxpayer. Hence, the evident intent of the legislature, in adding the last sentence to Section 76 of the NIRC of 1997, as amended, is to keep the taxpayer from flip-flopping on its options, and avoid confusion and complication as regards said taxpayer's excess tax credit. (See *Commissioner of Internal Revenue v. Bank of the Philippine Islands*, G.R. No. 178490, 7 July 2009, 592 SCRA 219, 231-232 and *Commissioner of Internal Revenue v. PL Management International Philippines, Inc.*, G.R. No. 160949, 4 April 2011, 647 SCRA 72, 81).

Clearly, the corporation must signify in its Annual Corporate Adjustment Return (by marking the option box provided in the BIR form) its intention, whether to request a refund or claim an automatic tax credit for the succeeding taxable year. To reiterate, these remedies are in the alternative, and the choice of one precludes the other (See *PBCom. v. Commissioner of Internal Revenue*, 361 Phil. 916, 932 [1999]).

over and apply the excess quarterly income tax against income tax due for the taxable quarters of the succeeding taxable years has been made, such option shall be considered irrevocable for that taxable period and no application for cash refund or issuance of a tax credit certificate shall be allowed therefor. (Emphasis supplied)

Applying the foregoing discussion to the present case, we find that respondent had indeed complied with the abovementioned requirements.

Here, it is undisputed that the claim for refund was filed within the two-year prescriptive period prescribed under Section 229[18] of the NIRC of 1997, as amended. Respondent filed[19] its income tax return for taxable year 2001 on 15 April 2002. Counting from said date, it indeed had until 14 April 2004[20] within which to file its claim for refund or issuance of tax credit certificate in its favor both administratively and judicially. Thus, petitioner's administrative claim and petition for review filed on 19 March 2003 and 27 March 2003, respectively, fell within the abovementioned prescriptive period.

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[18] See *ACCRA Investments Corporation v. Court of Appeals*, G.R. No. 96322, 20 December 1991, 204 SCRA 957, 963-964, where the Court ruled that the two-year prescriptive period commences to run on the date when the final adjustment return is filed, as that is the date when ACCRA could ascertain whether it made a profit or incurred losses in its business operation. The Court therein stated that, "there is the need to file a return first before a claim for refund can prosper inasmuch as the respondent Commissioner by his own rules and regulations mandates that the corporate taxpayer opting to ask for a refund must show in its final adjustment return the income it received from all sources and the amount of withholding taxes remitted by its withholding agents to the Bureau of Internal Revenue."

[19] The reckoning of the two-year prescriptive period for the filing of the claim for refund/tax credit certificates of excess creditable withholding tax/quarterly income tax payment starts from the date of filing of the annual income tax return [See *ACCRA Investments Corporation v. Court of Appeals, et al.*, G.R. No. 96322, 20 December 1991, 204 SCRA 957; *Commissioner of Internal Revenue v.TMX Sales, Inc.*, G.R. No. 83736, 15 January 1992, 205 SCRA 184, 192] because it is only from this time that the refund is ascertained [See *Com. of Internal Revenue v. Philamlife*, 314 Phil. 349, 366 (1995)].

[20] Taxable year 2004 being a leap year.

Likewise, respondent was able to present various certificates of creditable tax withheld at source from its payors, MPC and MSC, for taxable year 2001, showing creditable withholding taxes in the aggregate amount of ₱70,805,771.42 (although the refund claim was only ₱69,562,412.00).[21] Moreover, as determined by the CTA in Division, respondent declared the income related to the claimed creditable withholding taxes of ₱69,562,412.00 on its return.[22]

Lastly, in compliance with Section 76 of the NIRC of 1997, as amended, respondent opted to be refunded of its unutilized tax credit (as evidenced by the "x" mark in the appropriate box of its 2001 income tax return), and the same was not carried over in its 2002 income tax return; therefore, the entire amount of ₱69,562,412.00 may be a proper subject of a claim for refund/ tax credit certificate.[23]

It is apt to restate here the hornbook doctrine that the findings and conclusions of the CTA are accorded the highest respect and will not be lightly set aside. The CTA, by the very nature of its functions, is dedicated exclusively to the resolution of tax problems and has accordingly developed an expertise on the subject unless there has been an abusive or improvident exercise of authority.[24]

Consequently, its conclusions will not be overturned unless there has been an abuse or improvident exercise of authority. Its findings can only be disturbed on appeal if they are not supported by substantial evidence or there is a showing of gross error or abuse on the part of the Tax Court. In the absence of any clear and convincing proof to the contrary, this Court must

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[21] CTA in Division *rollo*, p. 463.

[22] *Id.* at 463-464.

[23] *Id.* at 461-462.

[24] *Toshiba Information Equipment (Phils.), Inc. v. Commissioner of Internal Revenue*, G.R. No. 157594, 9 March 2010, 614 SCRA 526, 561 citing *Commissioner of Internal Revenue v. Cebu Toyo Corporation*, 491 Phil. 625, 640 (2005).

presume that the CTA rendered a decision which is valid in every respect.[25]

The Court in this case agrees with the conclusion of the CTA in Division and subsequent affirmation of the CTA *En Banc* that respondent complied with all the requirements for the refund of its unutilized creditable withholding taxes for taxable period ending 31 December 2001. We adopt the factual and legal findings as follows:

> On the first ground, [petitioner] argues that [respondent] failed to present the various withholding agents/payors to testify on the validity of the contents of the Certificates of Creditable Tax Withheld at Source ("certificates"). Thus, the certificates presented by [respondent] are not valid. And even assuming that the certificates are valid, this Court cannot entertain the claim for refund/tax credit certificates because the certificates were not submitted to [petitioner].
>
> [Petitioner's] arguments are untenable **since the certificates presented (*Exhibits "R", "S", "T", "U", "V", "W", and "X")* were duly signed and prepared under penalties of perjury, the figures appearing therein are presumed to be true and correct. Thus, the testimony of the various agents/payors need not be presented to validate the authenticity of the certificates**.
>
> In addition, that [respondent] did not submit the certificates to the [petitioner] is of no moment. **The administrative and judicial claim for refund and/or tax credit certificates must be filed within the two-year prescriptive period starting from the date of payment of the tax (Section 229, NIRC). In the instant case, [respondent] filed its judicial claim (after filing its administrative claim) precisely to preserve its right to claim. Otherwise, [respondent's] right to the claim would have been barred. Considering that this [c]ourt had jurisdiction over the claim, [respondent] rightfully presented the certificates before this [c]ourt. Besides, any records**

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[25] *Barcelon, Roxas Securities, Inc. (now known as UBP Securities, Inc.) v. Commissioner of Internal Revenue*, 529 Phil. 785, 795 (2006) citing *Sea-Land Service, Inc. v. Court of Appeals*, G.R. No. 122605, 30 April 2001, 357 SCRA 441, 445-446 and *Commissioner of Internal Revenue v. Mitsubishi Metal Corp.*, G.R. No. 54908, 22 January 1990, 181 SCRA 214, 220.

that [petitioner] may have on the administrative claim would eventually be transmitted to this [c]ourt under Section 5(b), Rule 6 of the Revised Rules of the Court of (Tax) Appeals.

As for the second ground, this [c]ourt finds [petitioner's] contention unmeritorious. The requirements for claiming a tax refund/tax credit certificates had been laid down in *Citibank, N.A. vs. Court of Appeals, G.R. No. 107434, October 10, 1997.* **Nowhere in the case cited is proof of actual remittance of the withheld taxes to the [petitioner] required before the taxpayer may claim for a tax refund/tax credit certificates**.[26] (Emphasis supplied)

In the same vein, this Court finds no abusive or improvident exercise of authority on the part of the CTA in Division. Since there is no showing of gross error or abuse on the part of the CTA in Division, and its findings are supported by substantial evidence which were thoroughly considered during the trial, there is no cogent reason to disturb its findings and conclusions.

All told, respondent complied with all the legal requirements and it is entitled, as it opted, to a refund of its excess creditable withholding tax for the taxable year 2001 in the amount of ₱69,562,412.00.

WHEREFORE, the petition is hereby **DENIED** for lack of merit. Accordingly, the Decision dated 19 June 2007 and Resolution dated 13 August 2007 of the CTA *En Banc* are hereby **AFFIRMED**. No costs.

SO ORDERED.

Carpio (Chairperson), Brion, del Castillo, and *Perlas-Bernabe, JJ.,* concur.

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[26] CTA in Division *rollo,* pp. 487-488.

SECOND DIVISION

[G.R. No. 180098. April 2, 2014]

OFELIA FAUNI REYES and NOEL FAUNI REYES, *petitioners, vs.* **THE INSULAR LIFE ASSURANCE CO., LTD.,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; ACTIONS; REQUIRES ACTUAL CASE OR CONTROVERSY.— The existence of an actual case or controversy is a condition precedent for the court's exercise of its power of adjudication. An actual case or controversy exists when there is a conflict of legal rights or an assertion of opposite legal claims between the parties that is susceptible or ripe for judicial resolution. In negative terms, a justiciable controversy must neither be conjectural nor moot and academic. There must be a definite and concrete dispute touching on the legal relations of the parties who have adverse legal interests. The reason is that the issue ceases to be justiciable when a controversy becomes moot and academic; otherwise, the court would engage in rendering an advisory opinion on what the law would be upon a hypothetical state of facts. The disposition of the case would not have any practical use or value as there is no actual substantial relief to which the applicant would be entitled to and which would be negated by the dismissal or denial of the petition.

2. ID.; ID.; JUDGMENTS; FINAL JUDGMENT; ISSUANCE OF WRIT OF EXECUTION BECOMES THE COURT'S MINISTERIAL DUTY.— There is a final judgment when the court has adjudicated on the merits of the case or has categorically determined the rights and obligations of the parties in the case. A final judgment, once rendered, leaves nothing more to be done by the court. Consequently, a final judgment also becomes executory by operation of law; it becomes a fact upon the lapse of the reglementary period to appeal if no appeal or motion for new trial or reconsideration is filed or perfected. It becomes incumbent for the clerk of court to enter in the book of entries the judgment and the date

of finality of the judgment shall also be deemed to be the date of the entry of judgment. **Thereafter, the prevailing party is entitled to a writ of execution, and the issuance of the writ becomes the court's ministerial duty.**

3. ID.; ID.; ID.; ID.; ID.; PERIOD FOR EXECUTION OF FINAL JUDGMENT.— In relation to this, Section 6, Rule 39 of the Rules of Court provides that a final and executory judgment or order may be executed on motion within five years from the date of its entry. A judgment may also be enforced by action after the lapse of five years and before it is barred by the statute of limitations. The revived judgment may then be enforced by motion within five years from the date of its entry.

APPEARANCES OF COUNSEL

Law Firm of Gonong Paredes De Leon Mariñas Paredes Arevalo and Gonzales for petitioners.

Rodrigo Berenguer & Guno for respondent.

D E C I S I O N

BRION, *J.*:

We resolve the petition for review on *certiorari*[1] filed by petitioners Ofelia Fauni Reyes and Noel Fauni Reyes *(the petitioners)* to challenge the decision[2] dated April 16, 2007 of the Court of Appeals *(CA)* in CA-G.R. SP No. 94994.

The Factual Antecedents

On September 9 and 16, 1998, Joseph Fauni Reyes took out two life insurance policies from respondent Insular Life Assurance Company, Ltd. *(Insular Life)*, designating the petitioners as his beneficiaries. In September and October 1998, Insular Life

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[1] Dated October 30, 2007 and filed under Rule 45 of the Rules of Court; *rollo,* pp. 3-131.

[2] *Id*. at 132-141; penned by Associate Justice Estela M. Perlas-Bernabe (now a member of this Court), and concurred in by Associate Justices Renato C. Dacudao and Rosmari D. Carandang.

issued Insurance Policy Nos. A001440747 and A001440758, respectively, with a total face value of ₱8,000,000.00 in favor of Joseph.[3]

On October 19, 1998, a charred body inside the trunk of a burnt BMW car that Joseph owned was found in Ternate, Cavite. The petitioners, believing that the charred body belonged to Joseph, filed a claim for death benefits before Insular Life. The latter, however, denied the claim in a letter dated September 30, 1999 on the grounds of Joseph's alleged misrepresentation and concealment of material facts in life insurance applications.[4]

On October 6, 1999, Insular Life filed against the petitioners a complaint for rescission of insurance contracts and damages before the Regional Trial Court *(RTC)* of Makati – Branch 57. Insular Life also impleaded Joseph as a defendant on the theory that he was still alive.[5]

Insular Life alleged in its complaint that Joseph's death was not sufficiently established by preponderance of evidence. Insular Life also asserted that Joseph concealed that there was a threat to his life at the time of the application.[6] It relied on Ofelia's sworn statement that Joseph had knowledge of the threat to his life. The sworn statement stated that Joseph had noticed that a car was trailing behind his car two months before the tragic incident. Also, a suspicious man went to Joseph's auto supply at ten o'clock in the evening to ask for water a month before his alleged demise.[7] Insular Life further claimed that Joseph engaged in a wagering scheme when he took out numerous life insurance policies despite his knowledge of the danger to his life and without informing it of the subsistence of other life insurance policies.[8]

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[3] *Rollo,* p. 133.

[4] *Id*. at 133-134.

[5] *Id*. at 134-135.

[6] *Id*. at 135.

[7] *Rollo* in G.R. No. 189605, p. 24.

[8] *Rollo,* p. 135; The other life insurance companies are Ayala Life Insurance Corp., Philam Life Insurance Corp., and Philippines Axa Life Insurance Corp.

Lastly, Insular Life insisted that Joseph misrepresented that his annual income was ₱800,000.00 when his income tax return only reflected an annual income of ₱38,453.00.[9]

Proceedings before the RTC

In a decision dated March 8, 2006, the RTC dismissed the complaint for insufficiency of evidence. The RTC gave probative value to the National Bureau of Investigation *(NBI)* officials' testimonies that the charred body was Joseph's. The RTC also observed that Insular Life failed to present sufficient evidence that Joseph had knowledge of the threat to his life and of the subsistence of other life insurance policies on September 16, 1998. The RTC further relied on the admission of Mr. Jose Odena, Insular Life's lay underwriter, that it was the soliciting agent who filled out the information on Joseph's annual income in the Agent's Confidential Report.

The RTC ordered Insular Life to pay the petitioners: (1) the face value of the insular policies in the total amount of ₱8,000,000.00; (2) moral damages in the amount of ₱100,000.00; (3) exemplary damages in the amount of ₱50,000.00; and (4) attorney's fees in the amount of ₱100,000.00.[10]

On March 28, 2006, Insular Life filed a notice of appeal with the RTC. On March 31, 2006, the petitioners moved for the execution of the RTC decision pending appeal, citing as ground Ofelia's old age who was then 69 years old. **Upon posting of bond, the RTC issued a writ of execution in favor of the petitioners on June 8, 2006.**[11]

Proceedings before the CA and the Court

Insular Life filed a petition for *certiorari* before the CA seeking to nullify the writ of execution pending appeal. Insular Life argued that the RTC had no more jurisdiction over the case when it issued the writ as the main case was already appealed

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[9] *Id*. at 134.

[10] *Id*. at 172-184.

[11] *Id*. at 136.

to the CA. Insular Life also insisted that old age did not qualify as a "good reason" under Section 2, Rule 39 of the Rules of Court for the RTC to allow the execution pending appeal.[12]

The CA ruled in favor of Insular Life and annulled the writ of execution. The CA held that "old age" was a condition that was peculiar and personal to Ofelia alone, and not to Noel.[13] On September 28, 2007, the petitioners moved to reconsider the CA decision, but to no avail.[14] **On October 30, 2007, the petitioners filed the present petition before the Court, assailing the CA's annulment of the writ of execution.**[15]

Meanwhile, on November 28, 2008, the CA promulgated a decision on the main case affirming *in toto* the RTC decision. The CA additionally observed that Insular Life merely relied on the photocopy of Ofelia's sworn statement that Joseph had knowledge of the danger to his life. The CA ruled that this sworn statement had no probative value for being hearsay and for being violative of the best evidence rule. The CA also denied Insular Life's motion for reconsideration in a resolution dated September 18, 2009.[16]

Subsequently, Insular Life filed a petition for review on *certiorari* before the Court assailing the November 28, 2008 decision and the September 18, 2009 resolution of the CA.[17] The petition was docketed as G.R. No. 189605 and raffled to the Supreme Court – Third Division. **We denied the petition with finality for lack of merit in a resolution dated March 15, 2010.**[18] **On May 12, 2010, we issued an entry of judgment in G.R. No. 189605.**[19]

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[12] *Id*. at 137.

[13] *Supra* note 2.

[14] *Id*. at 69.

[15] *Id*. at 3-131.

[16] *Id*. at Annex A.

[17] *Rollo* in G.R. No. 189605, pp. 80-139.

[18] *Id*. at 427.

[19] *Id*. at 428.

The Issue

The case comes to us with the sole issue of whether the petitioners are entitled to execution pending appeal.

The Court's Ruling

We deny the petition.

The petition has already been rendered moot and academic with the entry of judgment in G.R. No. 189605

The existence of an actual case or controversy is a condition precedent for the court's exercise of its power of adjudication. An actual case or controversy exists when there is a conflict of legal rights or an assertion of opposite legal claims between the parties that is susceptible or ripe for judicial resolution.[20] In negative terms, a justiciable controversy must neither be conjectural nor moot and academic. There must be a definite and concrete dispute touching on the legal relations of the parties who have adverse legal interests. The reason is that the issue ceases to be justiciable when a controversy becomes moot and academic; otherwise, the court would engage in rendering an advisory opinion on what the law would be upon a hypothetical state of facts. The disposition of the case would not have any practical use or value as there is no actual substantial relief to which the applicant would be entitled to and which would be negated by the dismissal or denial of the petition.[21]

There is a final judgment when the court has adjudicated on the merits of the case or has categorically determined the rights and obligations of the parties in the case. A final judgment,

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[20] *Arevalo v. Planters Development Bank*, G.R. No. 193415, April 18, 2012, 670 SCRA 262-263.

[21] *Sarmiento v. Magsino*, G.R. No. 193000, October 16, 2013; *Korea Exchange Bank v. Judge Gonzales*, 520 Phil. 691, 701 (2006); *Desaville, Jr. v. Court of Appeals*, 480 Phil. 22, 26-27 (2004); *Royal Cargo Corporation v. Civil Aeronautics Board*, 465 Phil. 719-720, 725 (2004).

once rendered, leaves nothing more to be done by the court.[22] Consequently, a final judgment also becomes executory by operation of law; it becomes a fact upon the lapse of the reglementary period to appeal if no appeal or motion for new trial or reconsideration is filed or perfected. It becomes incumbent for the clerk of court to enter in the book of entries the judgment and the date of finality of the judgment shall also be deemed to be the date of the entry of judgment.[23] **Thereafter, the prevailing party is entitled to a writ of execution, and the issuance of the writ becomes the court's ministerial duty.**[24]

In the present case, the issue of the propriety of discretionary execution has already been rendered moot and academic with our denial of Insular Life's petition and issuance of the entry of judgment in G.R. No. 189605. This means that our affirmation of the lower courts' rulings on the main case has become final and executory. Consequently, the issue of whether the petitioners are entitled to discretionary execution pending appeal no longer presents any justiciable controversy. **It becomes the RTC's ministerial duty to issue a writ of execution in favor of the petitioners who are now entitled to execution as a matter of right.**

In relation to this, Section 6, Rule 39 of the Rules of Court provides that a final and executory judgment or order may be executed on motion within five years from the date of its entry. A judgment may also be enforced by action after the lapse of five years and before it is barred by the statute of limitations. The revived judgment may then be enforced by motion within five years from the date of its entry.

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[22] *Calderon v. Roxas,* G.R. No. 185595, January 9, 2013, 688 SCRA 330-331, 338; and *Philippine Business Bank v. Chua,* G.R. No. 178899, November 15, 2010, 634 SCRA 636-637, 648-649.

[23] RULES OF COURT, Rule 36, Section 2; RULES OF COURT, Rule 39, Section 1.

[24] RULES OF COURT, Rule 39, Section 1; and *Mindanao Terminal and Brokerage Service, Inc. v. Court of Appeals,* G.R. Nos. 163286, 166025 & 170269, August 22, 2012, 678 SCRA 623, 635.

WHEREFORE, premises considered, the petition is hereby **DENIED** for being moot and academic. No costs.

SO ORDERED.

Sereno,[*] *C.J., Carpio (Chairperson), del Castillo,* and *Perez, JJ.,* concur.

SECOND DIVISION

[G.R. No. 180496. April 2, 2014]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ROY SAN GASPAR,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; PARRICIDE; ELEMENTS.— "Parricide is committed when: (1) a person is killed; (2) the deceased is killed by the accused; (3) the deceased is the father, mother, or child, whether legitimate or illegitimate, or a legitimate other ascendant or other descendant, or the legitimate spouse of the accused."

2. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESS UPHELD IN THE ABSENCE OF ILL MOTIVE AND AS AGAINST DENIAL; FACTUAL FINDINGS OF TRIAL COURT, RESPECTED.— It has been held that in the absence of any ill motives on the part of the witnesses, their testimonies are worthy of full faith and credit. On the other hand, appellant only offered his bare denial of the offense. However, "[t]he Court had consistently stressed that denial, like alibi, is a weak defense that becomes even weaker in the

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[*] Designated as Additional Member in lieu of Associate Justice Estela M. Perlas Bernabe, per Raffle dated March 31, 2014.

face of positive identification of the accused by prosecution witnesses." The Court, therefore, finds no reason to disturb the factual findings of the trial court. "It is a well-settled rule that factual findings of the trial court involving the credibility of witnesses are accorded respect since trial courts have first-hand account on the witnesses' manner of testifying and demeanor during trial. The Court shall not supplant its own interpretation of the testimonies for that of the trial judge since he is in the best position to determine the issue of credibility." Furthermore, "in the absence of misapprehension of facts or grave abuse of discretion on the court *a quo*, and especially when the findings of the judge have been adopted and affirmed by the CA, the factual findings of the trial court shall not be disturbed."

3. CRIMINAL LAW; PARRICIDE; PROPER PENALTY AND CIVIL DAMAGES IN CASE AT BAR.— Article 246 of the RPC provides that the penalty for the crime of Parricide is *Reclusion Perpetua* to Death. The RTC and the CA correctly imposed upon appellant the penalty of *reclusion perpetua*, which is the lower of the two indivisible penalties, due to the absence of any aggravating circumstances in the commission of the crime. However, appellant is not eligible for parole. The Court also affirms the awards of civil indemnity and moral damages in the amount of ₱50,000.00 each. x x x Since the receipt presented during trial covering the funeral services only amounted to ₱15,000.00, the CA's award of ₱25,000.00 as temperate damages in lieu of actual damages is in order. In addition and pursuant to prevailing jurisprudence, an increased amount of ₱30,000.00 as exemplary damages on account of relationship, a qualifying circumstance which was alleged and proved, must likewise be awarded in the crime of parricide.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

D E C I S I O N

DEL CASTILLO, *J.*:

On appeal is the July 31, 2007 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-HC No. 00237, which affirmed with modification the January 29, 2003 Decision[2] of the Regional Trial Court (RTC), Branch 19 of Isulan, Sultan Kudarat in Criminal Case No. 2679. The RTC convicted Roy San Gaspar (appellant) of the crime of Parricide under Article 246 of the Revised Penal Code (RPC) and imposed upon him the penalty of *reclusion perpetua*.

Factual Antecedents

On June 2, 2000, appellant was charged with the crime of Parricide under Article 246 of the RPC in an Information[3] which reads as follows:

> That on or about 11:30 o'clock in the evening of April 25, 1999, at Purok Ma-oy, Barangay Bambad, Municipality of Isulan, Province of Sultan Kudarat, Philippines, and within the jurisdiction of this Honorable Court, the said accused, armed with a [.12] Gauge Homemade Shotgun, with intent to kill, did then and there, [willfully], [unlawfully] and feloniously, attack, assault and shot IMELDA E. SAN GASPAR, his legitimate wife, thereby inflicting gunshot wound upon the latter, which directly caused her death.
>
> CONTRARY TO LAW, particularly Article 246 of the Revised Penal Code of the Philippines, as amended by Republic Act 7659.[4]

Upon being arraigned on July 12, 2000, appellant, with the assistance of counsel, pleaded not guilty to the crime charged.[5] After pre-trial was terminated, trial on the merits ensued.

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[1] CA *rollo*, pp. 130-146; penned by Associate Justice Mario V. Lopez and concurred in by Associate Justices Romulo V. Borja and Elihu A. Ybañez.

[2] Records, pp. 94-121; penned by Judge German M. Malcampo.

[3] *Id.* at 20-21.

[4] *Id.* at 20.

[5] *Id.* at 27.

Version of the Prosecution

The following witnesses testified for the prosecution: Joramel Estimo (Joramel) and Cherme Estimo (Cherme), children of the victim Imelda E. San Gaspar (Imelda) and stepchildren of the appellant; Norman Estimo, the brother of Imelda who spent for her wake and funeral services; PO3 Rannie Arroza (PO3 Arroza), the officer on duty who investigated the incident; and Dr. Flocerpida V. Jocson (Dr. Jocson), the Municipal Health Officer who conducted the autopsy on the body of the victim. Their collective testimonies are summarized as follows:

In the afternoon of April 25, 1999, appellant, without informing his lawfully married wife Imelda, went to Norala, South Cotabato together with his father to attend the funeral of a relative.[6] At that time, appellant and Imelda were not on speaking terms for about a week already.[7]

At around 11:30 p.m. of the same day and while Imelda and her two children Joramel and Cherme were already fast asleep, appellant returned home and pounded on their front door. The thudding sound roused the whole household. Apparently, appellant was mad because nobody immediately opened the door for him. He got even more furious when he entered the house and saw Imelda sleeping side-by-side with her grown-up children. Appellant thus kicked Imelda on the leg while she was still lying on the floor and this started a heated altercation between them.[8] Appellant exclaimed, "What kind of wife [are you?],"[9] to which Imelda retorted, "what kind of a husband is a person who just leaves his family behind without asking permission or informing his wife of his whereabouts"? Imelda also told appellant that her sleeping with Joramel and Cherme is without any malice as they are her children.

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[6] TSN, April 20, 2001, p. 4.

[7] TSN, April 18, 2001, p. 13.

[8] TSN, April 18, 2001, pp. 13-14; TSN, April 20, 2001, p. 5.

[9] TSN, April 20, 2001, p. 6.

Still enraged, appellant went upstairs and returned with a .12 gauge shotgun. He loaded it and lit a kerosene lamp which he placed near the door of their room.[10] He then aimed the .12 gauge shotgun at his wife and in front of Joramel and Cherme, shot Imelda on the head.[11] Appellant thereafter immediately ran away.[12] Imelda was brought to Sultan Kudarat Provincial Hospital where she passed away.

The Municipal Health Officer of Isulan, Sultan Kudarat, Dr. Jocson, conducted an autopsy on Imelda's body. According to the Autopsy Report,[13] the cause of death was craniocerebral injury secondary to gunshot wound. Imelda suffered a fatal gunshot wound on the front left side of her head which penetrated her brain tissue with a depth of six inches.[14] Gunpowder residue surrounded the entry wounds, an indication that the distance of the barrel of the gun from the victim could not have been more than six feet.[15] In other words, Imelda was shot at close-range.

Version of the Defense

The defense, on the other hand, presented the following witnesses: Librada San Gaspar, the mother of the appellant; Vicente Martinez (Vicente), the owner of the tricycle used in transporting Imelda to the hospital; and the appellant himself. Their testimonies are summarized as follows:

In the morning of April 25, 1999, appellant went to Norala, South Cotabato with his father to attend the funeral of a relative.[16] He returned home by himself at around 7:00 p.m. just to change clothes and again returned to Norala after asking permission

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[10] TSN, April 18, 2001, pp. 34-39.

[11] *Id*. at 17-18.

[12] *Id*. at 19.

[13] Records, p. 10.

[14] *Id*.

[15] *Id*. at 109.

[16] TSN, May 16, 2001, p. 2.

from Imelda.[17] Imelda and her two children from her previous relationship, Joramel and Cherme, were left behind in their house.

It was already around 11:00 p.m. when appellant came home. But as he pushed the door to enter their room, he heard a gunshot from a .12 gauge shotgun.[18] Since it was dark, appellant rushed downstairs to fetch a lamp to see what had just happened.[19] With a lit lamp, he saw Imelda lying on the floor drenched in her own blood. Joramel and Cherme were beside her crying. Appellant thus immediately went out of their house to look for a tricycle to transport Imelda to the hospital.[20] Using Vicente's tricycle, they then brought Imelda to the Sultan Kudarat Provincial Hospital.[21] Thereafter, PO3 Arroza brought appellant to the police station for investigation. After questioning, he was detained at the Municipal Jail of Isulan.[22]

From the above narration, the defense postulates that when appellant pushed the door open, it hit the shotgun, causing it to accidentally discharge and hit Imelda.

Ruling of the Regional Trial Court

The RTC in its Decision[23] on January 29, 2003 convicted appellant of the crime of Parricide, *viz*:

> WHEREFORE, upon all the foregoing considerations, the Court finds the accused, Roy San Gaspar, guilty beyond a reasonable doubt of the crime of PARRICIDE.
>
> Accordingly, the Court hereby sentences the accused, Roy San Gaspar, to suffer the penalty of *RECLUSION PERPETUA*; to indemnify:

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[17] *Id*. at 2-3.

[18] *Id*. at 4-5.

[19] *Id*. at 5.

[20] *Id*.

[21] *Id*. at 6-7; TSN, June 7, 2001, pp. 2-4.

[22] TSN, April 23, 2002, p. 6.

[23] Records, pp. 94-121.

(a)- Norman Estimo the amount of ₱20,800.00, representing the total expenses he incurred by reason of the death, wake and burial of the deceased victim, Imelda Estimo San Gaspar, who was buried in Midsayap, Cotabato;

(b)- the heirs of the said deceased victim, the amount of ₱50,000.00, as statutory indemnity to death; as well as, the reasonable amount of ₱30,000.00, by way of moral damages; and the further sum of ₱20,000.00, as exemplary damages; and

to pay the costs.

Being a detention prisoner, the accused, Roy San Gaspar, is entitled to full credit of the entire period of his preventive imprisonment, pursuant to Article 29 of the Revised Penal Code, as amended by R.A. No. 6127, provided that the said accused had agreed in writing to abide by the same disciplinary rules and regulations imposed upon convicted prisoners, otherwise, with only four-fifths (4/5) thereof.

IT IS SO ORDERED.[24]

The RTC relied on the testimonies of the witnesses for the prosecution particularly, Joramel and Cherme. Having witnessed the shooting incident, both of them positively identified appellant as the person who shot their mother, Imelda. To the RTC, such positive identification, without any showing of ill-motive on the part of the eyewitnesses, was enough to establish the guilt of the appellant beyond reasonable doubt.[25] On the other hand, the RTC found appellant's defense of denial doubtful and unreliable. It further held that denial is a weak defense and that the same cannot prevail over the eyewitnesses' positive identification of appellant as the culprit.[26]

Ruling of the Court of Appeals

On appeal, the CA affirmed with modification the Decision of the RTC through a Decision[27] dated July 31, 2007, the dispositive portion of which states:

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[24] *Id.* at 120-121.

[25] *Id.* at 118.

[26] *Id.*

[27] CA *rollo,* pp. 130-146.

WHEREFORE, the assailed Decision of 29 January 2003 of the Regional Trial Court of Isulan, Sultan Kudarat, Branch 19 in Criminal Case No. 2679 convicting appellant Roy San Gaspar of parricide under Article 246 of the Revised Penal Code and sentencing him to suffer the penalty of *reclusion perpetua* is hereby AFFIRMED with the modification that he is ordered to pay the heirs of Imelda Estimo the sums of ₱50,000.00 as civil indemnity; ₱50,000.00 as moral damages; and ₱25,000.00 as temperate damages.

SO ORDERED.[28]

The CA held that since appellant asserted that the shooting was accidental, it was incumbent upon him to prove the existence of the elements of the exempting circumstance of accident.[29] However, he failed to discharge this burden. Furthermore, appellant's version of the circumstances leading to Imelda's death was incredulous. Contrary to his claim of accidental firing of the shotgun, the trajectory of the gunshot and the gunpowder burns around Imelda's wound suggest that the shooting was intentional.[30]

Not satisfied, appellant now appeals to this Court asserting that the lower courts erred in not giving exculpatory weight to the defense he interposed.

The Parties' Argument

Appellant in his Supplemental Brief[31] argues that the lower courts erred in not giving exculpatory weight to his defense that the shooting of Imelda was entirely accidental. He alleges that it was when he pushed the door of their room that he heard the bursting sound of the .12 gauge shotgun. Clearly, therefore, the proximate cause of the discharge of the shotgun that hit Imelda and eventually led to her death was the movement of their bedroom door. On the other hand, appellant labels the

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[28] *Id*. at 146.

[29] *Id*. at 143.

[30] *Id*. at 144.

[31] *Rollo,* pp. 31-38.

prosecution's version of what transpired as "unnatural, implausible, and contrary to human nature and experience."[32] He asserts that his act of immediately taking Imelda to the hospital after seeing her shot is contrary to the prosecution's claim that it was he who shot her. He avers that if that was the case, it would have been more plausible for him to immediately flee from the crime scene. But instead, he went out to find any means of transportation to rush her to the hospital.

On the other hand, the appellee People of the Philippines, as represented by the Office of the Solicitor General (OSG), agrees with the lower courts in finding appellant guilty of the crime of Parricide. It argues that appellant's defense of denial is weak considering that he failed to rebut the testimonies of Joramel and Cherme that a heated altercation between him and Imelda immediately preceded the shooting.[33] Furthermore, appellant failed to establish any ill motive on the part of his stepchildren to falsely impute a serious crime against him.

Our Ruling

The appeal has no merit.

Elements of Parricide obtaining in this case; Factual findings of the trial court, as affirmed by the CA, cannot be disturbed.

"Parricide is committed when: (1) a person is killed; (2) the deceased is killed by the accused; (3) the deceased is the father, mother, or child, whether legitimate or illegitimate, or a legitimate other ascendant or other descendant, or the legitimate spouse of the accused."[34]

In this case the prosecution was able to satisfactorily establish that Imelda was shot and killed by appellant based on the

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[32] *Id.* at 32.

[33] CA *rollo*, p. 116.

[34] *People v. Sales*, G.R. No. 177288, October 3, 2011, 658 SCRA 367, 379.

eyewitnesses' account. Joramel narrated the details of the shooting incident as follows:

> [Fiscal Alamada]: Now what happened after your step[father], Roy San Gaspar, arrived and entered the house?
>
> [Joramel]: He saw us sleeping and I was sleeping beside my mother.
>
> x x x x x x x x x
>
> Q: And after he noticed that you and the rest of your sisters were sleeping together in that one room with your mother, what did your step[father] do?
> A: He got mad, sir.
>
> Q: Why did you say that he got mad, how did you know that he got mad?
> A: He got mad because [he was] not [on] talking terms with my mother x x x [and] because the door was not opened for him immediately.
>
> x x x x x x x x x
>
> Q: Upon entering the room [and] having seen that you were all sleeping together near each other with your mother, what did your step[father] say[,] if [any]?
> A: He said, it is [not] good that you were sleeping side by [side] with your children.
>
> Q: And what was the remark of your mother?
> A: My mother told him that do not give any malice because they are my children.
>
> Q: And after that, what happened?
> A: He kicked my mother, sir.
>
> x x x x x x x x x
>
> Q: And now, what followed x x x after your mother confronted her husband of being kicked by him?
> A: He got the firearm upstairs, sir.
>
> Q: Now, what kind of firearm was that?
> A: .12 gauge.
>
> x x x x x x x x x

Q: Now, after your stepfather [had] taken from upstairs this firearm x x x, what happened next?
A: He loaded it, sir.

Q: With what?
A: With bullet.

x x x x x x x x x

Q: And what did he do with the firearm after getting it from upstairs and after loading the same?
A: He used that in shooting my mother.

Q: Was your mother hit?
A: Yes, sir.

Q: Where was [s]he hit?
A: On her head.[35]

Cherme, on the other hand, corroborated the testimony of her brother on material points. Thus:

[Fiscal Alamada]: After your step[father] kicked your mother, what happened?

[Cherme]: After my step[father] kicked my mother they discussed and my step[father] took the long firearm and [lit] the lamp and placed [it] near the door, sir.

x x x x x x x x x

Q: And after your step[father] took that firearm, what did he do?
A: He shot my mother, sir.

x x x x x x x x x

Q: Where were you at the time when your step[father] shot your mother?
A: I was [beside] my mother.

Q: How about this [Joramel], where was he?
A: He was also [beside] my mother, sir.[36]

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[35] TSN, April 18 2001, pp. 12-17.

[36] TSN, April 20, 2001, pp. 7-8.

Joramel and Cherme positively and categorically identified appellant as the one who shot and killed Imelda. Their testimonies corroborated each other on material details. Moreover, there is no showing that Joramel and Cherme were impelled by any ill motive to testify against appellant. It has been held that in the absence of any ill motives on the part of the witnesses, their testimonies are worthy of full faith and credit.[37] On the other hand, appellant only offered his bare denial of the offense. However, "[t]he Court had consistently stressed that denial, like alibi, is a weak defense that becomes even weaker in the face of positive identification of the accused by prosecution witnesses."[38] The Court, therefore, finds no reason to disturb the factual findings of the trial court. "It is a well-settled rule that factual findings of the trial court involving the credibility of witnesses are accorded respect since trial courts have first-hand account on the witnesses' manner of testifying and demeanor during trial. The Court shall not supplant its own interpretation of the testimonies for that of the trial judge since he is in the best position to determine the issue of credibility."[39] Furthermore, "in the absence of misapprehension of facts or grave abuse of discretion on the court *a quo*, and especially when the findings of the judge have been adopted and affirmed by the CA, the factual findings of the trial court shall not be disturbed."[40]

Anent the relationship of appellant and Imelda as legitimate husband and wife, the CA correctly observed that the same has been sufficiently established by appellant's admission[41] that Imelda was his wife and by a copy of their Marriage Certificate[42] presented during trial.[43]

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[37] *People v. Jumamoy*, G.R. No. 101584, April 7, 1993, 221 SCRA 333, 344.

[38] *People v. Macatingag*, 596 Phil. 376, 389 (2009).

[39] *People v. Ramos*, G.R. No. 190340, July 24, 2013.

[40] *Id*.

[41] TSN, May 16, 2001, p. 2.

[42] Records, p. 6.

[43] CA *rollo*, p. 145.

Clearly, all the elements of the crime of Parricide under Article 246 of the RPC are present in this case.

Appellant's defense of accident deserves no credence.

While appellant describes the prosecution's version of events as "unnatural, implausible, and contrary to human nature and experience,"[44] the Court finds that it is his story of accidental discharge of the shotgun that is incredulous and unbelievable. Contrary to what appellant wants this Court to believe, a .12 gauge shotgun will not go off unless it is loaded, cocked, and its trigger squeezed. To this Court, appellant's allegation is nothing but a self-serving statement without an ounce of proof or a lick of credibility. Moreover, the same does not jibe with the result of the autopsy conducted on Imelda's body. As aptly observed by the CA:

x x x We reject appellant's testimony for it failed to explain how and why the victim sustained a gunshot wound on her forehead. If the .12 gauge firearm fell, why was the trajectory of the bullet frontal? And, why was there gunpowder burns around the wound of the victim, suggesting that the assailant was not more than six (6) feet away from the victim? There is nothing [nearer to] the truth than the testimony of the attending physician who examined Imelda on this matter:

Atty. Ramos : Will you be able to know what was the trajectory of that injury sustained by the victim?

Dra. Jocson : It is in the front, sir.

x x x x x x x x x

Court : Will you kindly tell us, [D]octor, about how far is the barrel of the gun from the victim in order that gunpowder burn could be noticed around the wound?

A : At least not more than six feet from the victim, your [H]onor.

x x x x x x x x x

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[44] *Rollo,* p. 32.

Q : Will you please point to us, [D]octor, the location of the gunshot wound on the face?

A : Left aspect of the frontal, your [H]onor. (witness pointing to the left portion of the forehead.

We thus entertain no reasonable doubt as to appellant's culpability. The location of the gunshot wound with gunpowder burns clearly shows that the shooting was not accidental, but rather indicative of an intentional killing. x x x[45]

All told, the Court sustains the trial court's conviction of appellant, as affirmed by the CA, of the crime of Parricide.

Penalties

Article 246 of the RPC provides that the penalty for the crime of Parricide is *Reclusion Perpetua* to Death. The RTC and the CA correctly imposed upon appellant the penalty of *reclusion perpetua*, which is the lower of the two indivisible penalties, due to the absence of any aggravating circumstances in the commission of the crime.[46] However, appellant is not eligible for parole.[47]

The Court also affirms the awards of civil indemnity and moral damages in the amount of ₱50,000.00 each.[48] The CA's award of temperate damages must also be sustained. In *People v. Andres*[49] and *People v. Magdaraog*[50] the Court said:

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[45] CA *rollo*, p. 144.

[46] Revised Penal Code, Article 63, paragraph (2).

[47] Sec. 3 of Republic Act No. 9346 (An ACt Prohibiting the Imposition of Death Penalty in the Philippines approved June 24, 2006) provides:

Person convicted of offenses punished with *reclusion perpetua*, or whose sentences will be reduced to *reclusion perpetua*, by reason of this Act, shall not be eligible for parole under Act No. 4180, otherwise known as the Indeterminate Sentence Law, as amended.

[48] *People v. Maglian*, G.R. No. 189834, March 30, 2011, 646 SCRA 770, 784.

[49] 456 Phil. 355, 369-370 (2003).

[50] G.R. No. 151251, May 19, 2004, 428 SCRA 529, 543.

"[W]e declared in the case of *People v. Villanueva*, that:

> x x x when actual damages proven by receipts during the trial amount to less than ₱25,000.00, as in this case, the award of temperate damages for ₱25,000.00 is justified in lieu of actual damages of a lesser amount. Conversely, if the amount of actual damages proven exceeds ₱25,000.00, then the temperate damages may no longer be awarded; actual damages based on the receipts presented during trial should instead be granted.

The victim's heirs should, thus, be awarded temperate damages in the amount of ₱25,000.00."

Since the receipt presented during trial covering the funeral services only amounted to ₱15,0000.00, the CA's award of ₱25,000.00 as temperate damages in lieu of actual damages is in order.

In addition and pursuant to prevailing jurisprudence, an increased amount of ₱30,000.00 as exemplary damages on account of relationship, a qualifying circumstance which was alleged and proved, must likewise be awarded in the crime of parricide.[51]

WHEREFORE, the appeal is **DISMISSED**. The July 31, 2007 Decision of the Court of Appeals in CA-G.R. CR-HC No. 00237 which affirmed with modification the January 29, 2003 Decision of the Regional Trial Court of Isulan, Sultan Kudarat, Branch 19 in Criminal Case No. 2679, finding appellant Roy San Gaspar guilty of the crime of Parricide and sentencing him to suffer the penalty of *reclusion perpetua*, is hereby **AFFIRMED with modifications** that appellant is not eligible for parole and the award of exemplary damages is increased to ₱30,000.00. In addition, an interest of 6% *per annum* is imposed on all monetary awards from the date of finality of this Decision until fully paid.

SO ORDERED.

Carpio (Chairperson), Brion, Perez, and *Perlas-Bernabe, JJ.,* concur.

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[51] *People v. Tibon*, G.R. No. 188320, June 29, 2010, 622 SCRA 510, 523.

SECOND DIVISION

[G.R. No. 189456. April 2, 2014]

CHIANG KAI SHEK COLLEGE and CARMELITA ESPINO, *petitioners, vs.* **ROSALINDA M. TORRES,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; POST-EMPLOYMENT; RESIGNATION; ELUCIDATED.— Resignation is the voluntary act of an employee who is in a situation where one believes that personal reasons cannot be sacrificed for the favor of employment, and opts to leave rather than stay employed. It is a formal pronouncement or relinquishment of an office, with the intention of relinquishing the office accompanied by the act of relinquishment. As the intent to relinquish must concur with the overt act of relinquishment, the acts of the employee before and after the alleged resignation must be considered in determining whether, he or she, in fact, intended to sever his or her employment.

2. ID.; ID.; CONSTRUCTIVE DISMISSAL; NOT PRESENT AS THERE IS INDICATION OF VOLUNTARY RESIGNATION IN CASE AT BAR.— Given the indications of voluntary resignation, we rule that there is no constructive dismissal in this case. There is constructive dismissal when there is cessation of work, because continued employment is rendered impossible, unreasonable or unlikely, as an offer involving a demotion in rank or a diminution in pay and other benefits. Aptly called a dismissal in disguise or an act amounting to dismissal but made to appear as if it were not, constructive dismissal may, likewise, exist if an act of clear discrimination, insensibility, or disdain by an employer becomes so unbearable on the part of the employee that it could foreclose any choice by him except to forego his continued employment. There was here no discrimination committed by petitioners. While respondent did not tender her resignation wholeheartedly, circumstances of her own making did not give her any other option. With due process, she was found to have committed the grave offense of leaking test questions. Dismissal from

employment was the justified equivalent penalty. Having realized that, she asked for, and was granted, not just a deferred imposition of, but also an acceptable cover for the penalty.

APPEARANCES OF COUNSEL

Ang and Associates for petitioners.
Ma. Concepcion L. Regalado for respondent.

D E C I S I O N

PEREZ, *J.*:

Assailed in this Petition for Review is the 29 May 2009 Decision[1] and 2 September 2009 Resolution[2] of the Court of Appeals in CA-G.R. SP No. 105576 declaring respondent Rosalinda M. Torres to have been constructively dismissed and awarding her separation pay. The challenged Decision and Resolution reversed and set aside the Decision of the National Labor Relations Commission (NLRC).

The facts are as follow:

Petitioner Chiang Kai Shek College is a private educational institution that offers elementary to college education to the public. Individual petitioner Carmelita Espino is the Vice-President of the school. Respondent had been employed as a grade school teacher of the school from July 1970 until 31 May 2003. The manner of her severance from employment is the matter at hand.

Respondent was accused of leaking a copy of a special quiz given to Grade 5 students of *HEKASI* (*HEKASI* 5). *HEKASI* stands for *Heograpiya, Kasaysayan at Sibika* (Geography, History and Civics). Petitioners came to know about the leakage

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[1] Penned by Associate Justice Estela M. Perlas-Bernabe (now Supreme Court Associate Justice) with Associate Justices Mario L. Guariña III and Myrna Dimaranan Vidal, concurring. *Rollo,* pp. 58-70.

[2] *Id.* at 56.

from one of the teachers of *HEKASI* 5, Aileen Benabese (Ms. Benabese). Ms. Benabese narrated that after giving a special quiz, she borrowed the book of one of her students, Aileen Regine M. Anduyan (Aileen), for the purpose of making an answer key. When she opened Aileen's book, a piece of paper fell. Said paper turned out to be a copy of the same quiz she had just given and the same already contained answers.

Ms. Benabese informed the school's Assistant Supervisor Mrs. Gloria Caneda (Mrs. Caneda) about the incident. Mrs. Caneda conferred with Assistant Supervisor Encarnacion Koo (Mrs. Koo), who was in charge of the *HEKASI* area, and Supervisor Luningning Tibi (Ms. Tibi). Mrs. Koo confronted respondent, who had initially denied leaking the test paper but later on admitted that she gave the test paper to Mrs. Teresita Anduyan (Mrs. Anduyan), her co-teacher and the mother of Aileen. Respondent and Mrs. Anduyan were both directed to submit their written statement on the incident.

Respondent explained that she was busy checking the writing workbook when somebody handed her the special quiz for *HEKASI* 5, thus:

> Yesterday morning, before the bell rings, I was busy checking the writing workbook when somebody handed me the special quiz for Hekasi 5. I placed them on the table and continued with what I'm doing. Mrs. Anduyan got one paper and read it. When I finished checking the books I got the papers and went upstairs forgetting about the paper Mrs. Anduyan got.
>
> Then, this morning (July 30), Mrs. Koo confronted me about the two answered test papers of Aileen Anduyan, I knew one of them was the paper Mrs. Anduyan borrowed from me. I admitted it to Mrs. Koo and I was so sorry and apolog[e]tic for any carelessness and for what happened.[3]

Mrs. Anduyan, in her statement dated 17 August 2002, denied that she took the test paper from petitioner without the latter's permission:

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[3] *Id.* at 77.

Last July 29, 2000 it happened in the Faculty Rm.

This event was not intensional [sic] it just happened. I just asked Mrs. Torres to look for the special quiz in Hekasi, but she gave it to me and I let my daughter to [sic] see the test paper and she answered it.[4]

On 5 August 2002, Mrs. Koo, Mrs. Caneda and Ms. Tibi executed a written statement stating that when confronted by Mrs. Koo, respondent initially denied leaking a copy of the quiz but later on admitted to doing the same.[5]

In three (3) separate Letters,[6] Mrs. Koo, Mrs. Caneda and Ms. Tibi stated that respondent admitted to Mrs. Koo that she leaked the special quiz and directed respondent and Mrs. Anduyan to give their comment.

Mrs. Anduyan, in her Comment dated 19 August 2002, denied that she asked for the special quiz from respondent and that the latter forgot about the paper that she allegedly took. Mrs. Anduyan stated:

x x x *Doon po sa salita ni Gng. Gloria Caneda na ayon kay Gng.* Rosalinda Torres "I asked for the special quiz # 1 in *Hekasi* 5" *ay wala pong katotohanan. Tulad din po ng sinabi ni Gng.* Rosalinda Torres "She went upstairs forgetting about the paper that I got" *ay hindi po rin totoo.*

Sa katunayan, ito po ang tunay na nangyari noong Hulyo 29, 2002 ng umaga sa Faculty Room. Totoo pong nagche-check ng Writing Book si Gng. Torres nang hiniraman ko yuon Special Quiz #1 sa Hekasi 5. Ang sabi ko "Linda, patingin nga ng test ninyo" So, *ibinigay naman niya ito* "willingly" *at hindi ko kinuha tulad ng kanyang salaysay. Sabi ko pahiram at hindi ko kinuha ng walang pahintulot. Sa katunayan inabot niya ito sa akin. Nagulat nga ako ng sabihin niya sa iyo na lang. So, kinuha ko po at umakyat na ako sa room ko* x x x. (Italics supplied).[7]

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[4] *Id.* at 78.

[5] *Id.* at 79.

[6] *Id.* at 80-86.

[7] *Id.* at 87.

Respondent submitted her Comment. She insisted that Mrs. Anduyan asked her to see the special quiz. She was not aware that Mrs. Anduyan did not return the copy of the special quiz back to her. She made the following statement:

> x x x While I was very busy and deeply engrossed with my checking, Mrs. Teresita Anduyan approached my desk. By chance, Mrs. Anduyan saw copies of the Special Quiz # 1 on my desk. Mrs. Anduyan told me, "*Patinghin, pabasa lang*." Among faculty members, it is usual that teachers look into the type of questions to be given to pupils without necessarily divulging them. I did not expect that Mrs. Anduyan would be divulging test questions, since she is a faculty member herself and is bound to such duty of confidentiality.
>
> When I finished checking the Writing Workbooks, I took all copies of the Special Quizzes that were handed over to me and left to attend my first class last 29 July 2002. I did not intend for Mrs. Anduyan to have a copy of Special Quiz # 1. I am not even aware that Mrs. Anduyan took a copy of Special Quiz # 1. It did not occur to me that Mrs. Anduyan could have taken a copy of the test. Neither did I hand over a copy of the test questions with the answers already indicated therein.
>
> On 30 July 2002, when Mrs. Koo confronted me about this incident what I relayed to her are the circumstances as explained above. In my written narration dated 30 July 2002 and during my conversation with Mrs. Koo, I did not admit that I intentionally gave Mrs. Anduyan a copy of the test paper. I was candid to relay to Mrs. Koo the relevant circumstances that led to the subject incident. To clarify, I expressed my concern that Mrs. Anduyan could have taken a copy of the test paper without my permission and without my knowledge.[8]

An administrative hearing was conducted on 28 August 2002 wherein respondent and Mrs. Anduyan were asked questions by the Investigating Committee relative to the leakage of test paper.

On 30 August 2002, the Investigating Committee held a meeting and found respondent and Mrs. Anduyan guilty of committing a grave offense of the school policies by leaking a special quiz.

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[8] *Id*. at 89-90.

As shown in the Minutes of the Meeting on 30 August 2002, the Committee decided to impose the penalty of one-month suspension without pay on respondent and forfeiture of all the benefits scheduled to be given on Teacher's Day.[9]

According to petitioners, their Investigating Committee had actually decided to terminate respondent and had in fact prepared a memorandum of termination,[10] but respondent allegedly pleaded for a change of punishment in a short letter dated 5 September 2002, to wit:

> Request for change of punishment from termination to suspension and I am resigning at the end of the school year.
>
> Mrs. Rosalinda M. Torres[11]

Petitioners acceded to the request and suspended respondent and Mrs. Anduyan effective 16 September to October 2002. The duo was directed to report to work on 4 November 2002.[12] Respondent continued her employment from 4 November 2002 until the end of the school year on 26 March 2003.

On 14 February 2003 however, respondent's counsel sent a letter to petitioners containing the following demands:

(1) To pay backwages to Mrs. Torres for the period of 16 September 2002 to 31 October 2002 at the rate of her current salary of Sixteen Thousand Three Hundred Thirty-Five Pesos (₱16,335.00) or the total amount of at least TWENTY-FOUR THOUSAND FIVE HUNDRED TWO PESOS and 50/100 (₱24,502.50);
(2) To pay Mrs. Torres her September bonus given by the Alumni Association that was released last September 2002 during the Teacher's Recognition Day in the amount of at least THREE THOUSAND PESOS (₱3,000.00);
(3) To pay Mrs. Torres her "Teacher's Day Gift" given by the Students' Council of the Elementary Department that was

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[9] *Id*. at 93-94.

[10] *Id*. at 95.

[11] *Id*. at 96.

[12] *Id*. at 97.

released last September 2002 during the Teachers' Recognition Day in the amount of at least SIX HUNDRED PESOS (₱600.00);

(4) To cease and desist from calling for our client's resignation at the end of School Year 2002-2003 or on 31 May 2003

(5) Moral damages in the amount of at least TWO HUNDRED FIFTY THOUSAND PESOS (₱250,000.00); and

(6) Exemplary damages in the amount of at least TWO HUNDRED FIFTY THOUSAND PESOS (₱250,000.00).[13]

Petitioners, through counsel, wrote to respondent's counsel asserting that respondent was being terminated but the latter requested that "she be suspended instead on condition that she will tender her voluntary resignation at the end of the school year."[14]

On 10 June 2003, respondent filed a complaint for constructive dismissal and illegal suspension with the Labor Arbiter. She also sought payment of unpaid salary, backwages, holiday pay, service incentive leave pay, 13th month pay, separation pay, retirement benefits, damages and attorney's fees.[15]

In her Position Paper, respondent alleged that she was forced and pressured to submit the written request for a change of penalty and commitment to resign at the end of the school year. She was threatened by the school management with immediate dismissal from service if she did not submit the written statement. She claimed that she was not formally charged with any offense and she was not served a copy of the notice of the school's decision to terminate her services.

Petitioners insisted that respondent voluntarily resigned. Petitioners averred that respondent was accorded her right to due process prior to her termination. A formal investigation was conducted during which respondent was given the opportunity to defend herself and confront her accusers.

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[13] *Id.* at 99-100.

[14] *Id.* at 101.

[15] *Id.* at 103.

On 3 February 2004,[16] Labor Arbiter Eduardo J. Carpio dismissed respondent's complaint for lack of merit. The Labor Arbiter deemed respondent's suspension coupled with petitioner's allowance of respondent's resignation at the end of the school year as generous acts considering the offense committed. The Labor Arbiter held that there was no constructive dismissal because respondent was not coerced nor pressured to write her resignation letter.

On appeal, the Second Division of the NLRC rendered a Decision[17] affirming the Labor Arbiter's findings but ordering petitioners to pay respondent separation pay equivalent to one-half (½) month salary for every year of service on the grounds of equity and social justice.

Respondent elevated the case to the Court of Appeals. On 29 May 2009, the Court of Appeals reversed the NLRC Decision and Resolution. The dispositive portion provides:

> WHEREFORE, premises considered, the instant petition is GRANTED. The assailed Decision dated July 26, 2007 of the NLRC and Resolution dated July 1, 2008 in NLRC NCR CA No. 039879-04 are hereby REVERSED and SET ASIDE and a new one rendered as follows:
>
> 1. Declaring petitioner Rosalinda M. Torres to have been constructively dismissed;
> 2. Ordering private respondents to pay petitioner her separation pay equivalent to one (1) month salary for every year of service with a fraction of at least six (6) months being considered as one (1) whole year, full backwages and other privileges and benefits, or their monetary equivalent, computed from the time of her dismissal on June 1, 2003 until her retirement or the finality of this Decision, whichever comes first;
> 3. Retirement benefits pursuant to the school's Retirement Plan;
> 4. Moral and Exemplary damages in the amount of ₱10,000.00 each; and
> 5. 10% of the total award as Attorney's fees.

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[16] *Id.* at 305-311.

[17] Penned by Commissioner Angelita A. Gacutan with Commissioners Raul T. Aquino and Victoriano R. Calaycay, concurring. *Id.* at 399-408.

> The case is hereby ordered remanded to the Labor Arbiter for computation of the foregoing monetary awards due the petitioner.[18]

The Court of Appeals ruled that petitioner did not voluntarily resign but was constructively dismissed. The appellate court cited respondent's years in service; her consistent denials of the accusations against her; her alleged resignation letter which did not contain any reason for her resignation; and the unsigned memorandum of termination which militate against the voluntariness of resignation. The appellate court also foreclosed any interpretation that respondent was validly dismissed for a just cause because respondent was already meted the penalty of suspension without pay and forfeiture of her bonuses. The appellate court found it unjust to penalize respondent twice for the same offense.

Petitioners moved for reconsideration but it was denied in a Resolution issued on 2 September 2009.

We are called upon to determine whether or not in this case the school's act of imposing the penalty of suspension instead of immediate dismissal from service at the behest of the erring employee, in exchange for the employee's resignation at the end of the school year, constitutes constructive dismissal.

There is before us a reassertion by the parties of their positions taken below.

Petitioners point out that in respondent's handwritten letter dated 5 September 2002, she offered to voluntarily resign at the end of the school year, provided that her punishment be changed from termination to suspension. Petitioners claim that respondent, who was faced with immediate termination of her employment, bargained for a better exit. Petitioners deny forcing, coercing or pressuring respondent into writing said letter.

Respondent, on the other hand, averred that individual petitioner forced her to write the written request for a change of the action on the charges against her, from dismissal to suspension and

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[18] *Id*. at 69-70.

eventual resignation. Respondent reiterates that she never intended to resign but due to intense pressure from individual petitioner who threatened that she will not receive her monetary benefits, she was pressured to write the alleged resignation letter.

Resignation is the voluntary act of an employee who is in a situation where one believes that personal reasons cannot be sacrificed for the favor of employment, and opts to leave rather than stay employed. It is a formal pronouncement or relinquishment of an office, with the intention of relinquishing the office accompanied by the act of relinquishment. As the intent to relinquish must concur with the overt act of relinquishment, the acts of the employee before and after the alleged resignation must be considered in determining whether, he or she, in fact, intended to sever his or her employment.[19]

Respondent had admitted to leaking a copy of the *HEKASI 5* special quiz. She reluctantly made the admission and apologized to Mrs. Koo when the latter confronted her. She admitted during the 28 August 2002 hearing of executing two (2) contradictory statements. On 30 August 2002, the Investigating Committee found respondent guilty of leaking a copy of the special quiz. Based on this infraction alone, Chiang Kai Shek College would have been justified to validly terminate respondent from service. As Associate Justice Antonio T. Carpio emphasized, academic dishonesty is the worst offense a teacher can make because teachers caught committing academic dishonesty lose their credibility as educators and cease to be role models for their students. More so that under Chiang Kai Shek College Faculty Manual, leaking and selling of test questions is classified as a grave offense punishable by dismissal/termination.[20]

On 5 September 2002, respondent was verbally informed by Mrs. Caneda, Mrs. Carmelita Espino and Ms. Tibi that she

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[19] *Bilbao v. Saudi Arabian Airlines*, G.R. No. 183915, 14 December 2011, 622 SCRA 540, 549 citing *BMG Records (Phils.) Inc. v. Aparecio*, 559 Phil. 80, 94 (2007); *Nationwide Security and Allied Services, Inc. v. Valderama*, G.R. No. 186614, 23 February 2011, 644 SCRA 299, 307-308.

[20] *Rollo*, pp. 72-73.

was being dismissed from service. Before the Investigating Committee could formalize respondent's dismissal, respondent handwrote a letter requesting that the penalty be lowered from dismissal to suspension in exchange for respondent's resignation at the end of the school year.

We do not find anything irregular with respondent's handwritten letter. The letter came about because respondent was faced with an imminent dismissal and opted for an honorable severance from employment. That respondent voluntarily resigned is a logical conclusion. Justice Arturo D. Brion correctly observed that respondent's infraction and the inevitable and justifiable consequence of that infraction, *i.e.*, termination of employment, induced her to resign or promise to resign by the end of the school year.

Given the indications of voluntary resignation, we rule that there is no constructive dismissal in this case. There is constructive dismissal when there is cessation of work, because continued employment is rendered impossible, unreasonable or unlikely, as an offer involving a demotion in rank or a diminution in pay and other benefits. Aptly called a dismissal in disguise or an act amounting to dismissal but made to appear as if it were not, constructive dismissal may, likewise, exist if an act of clear discrimination, insensibility, or disdain by an employer becomes so unbearable on the part of the employee that it could foreclose any choice by him except to forego his continued employment.[21] There was here no discrimination committed by petitioners. While respondent did not tender her resignation wholeheartedly, circumstances of her own making did not give her any other option. With due process, she was found to have committed the grave offense of leaking test questions. Dismissal from employment was the justified equivalent penalty. Having realized

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[21] *Gemina, Jr. v. Bankwise Inc. (Thrift Bank)*, G.R. No. 175365, 23 October 2013, citing *Verdadero v. Barneys Autolines Group of Companies Transport, Inc.*, G.R. No. 195428, 29 August 2012, 679 SCRA 545, 555, citing further *Morales v. Harbour Centre Port Terminal, Inc.*, G.R. No. 174208, 25 January 2012, 664 SCRA 110, 117-118.

that, she asked for, and was granted, not just a deferred imposition of, but also an acceptable cover for the penalty.

Respondent's profession, the gravity of her infraction, and the fact that she waited until the close of the school year to challenge her impending resignation demonstrate that respondent had bargained for a graceful exit and is now trying to renege on her obligation. Associate Justice Antonio T. Carpio accordingly noted that petitioners should not be punished for being compassionate and granting respondent's request for a lower penalty. Put differently, respondent should not be rewarded for reneging on her promise to resign at the end of the school year. Otherwise, employers placed in similar situations would no longer extend compassion to employees. Compromise agreements, like that in the instant case, which lean towards desired liberality that favor labor, would be discouraged.

Based on the foregoing disquisition, we reverse.

WHEREFORE, premises considered, the Petition is **GRANTED.** The 29 May 2009 Decision and 2 September 2009 Resolution of the Court of Appeals in CA-G.R. SP No. 105576 are **REVERSED and SET ASIDE.** The 26 July 2007 Decision rendered by the NLRC is **REINSTATED**.

SO ORDERED.

Carpio (Chairperson), Leonardo-de Castro,[*] *Brion,* and *del Castillo, JJ.*, concur.

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[*] Per Raffle dated 10 February 2014.

SECOND DIVISION

[G.R. No. 190276. April 2, 2014]

EUFROCINA NIEVES, as represented by her attorney-in-fact, LAZARO VILLAROSA, JR., *petitioner, vs.* **ERNESTO DULDULAO and FELIPE PAJARILLO,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; AGRICULTURAL LAND REFORM CODE (RA 3844); GROUNDS WHEN AGRICULTURAL LESSEES MAY BE EJECTED; FAILURE TO PAY LEASEHOLD RENTALS.— Agricultural lessees, being entitled to security of tenure, may be ejected from their landholding only on the grounds provided by law. These grounds – the existence of which is to be proven by the agricultural lessor in a particular case – are enumerated in Section 36 of Republic Act No. (RA) 3844, otherwise known as the "Agricultural Land Reform Code." x x x To eject the agricultural lessee for failure to pay the leasehold rentals under item 6, jurisprudence instructs that the same must be **willful and deliberate** in order to warrant the agricultural lessee's dispossession of the land that he tills.

2. ID.; ID.; ID.; ID.; DEFENSE OF FORTUITOUS EVENT MUST BE SUBSTANTIALLY PROVED.— In the present case, petitioner seeks the dispossession of respondents from the subject land on the ground of non-payment of leasehold rentals based on item 6, Section 36 of RA 3844. While **respondents indeed admit that they failed to pay the full amount of their respective leasehold rentals as they become due**, they claim that their default was on account of the debilitating effects of calamities like flashfloods and typhoons. This latter assertion is a defense provided under the same provision which, if successfully established, allows the agricultural lessee to retain possession of his landholding. The records of this case are, however, bereft of any showing that the aforestated claim was substantiated by any evidence tending to prove the same. Keeping in mind that **bare allegations, unsubstantiated by evidence, are not equivalent to proof**,

the Court cannot therefore lend any credence to respondents' fortuitous event defense.

3. ID.; ID.; ID.; ID.; WHERE DEFAULT IN PAYMENT OF LEASEHOLD RENTALS IS WILLFUL AND DELIBERATE, DISPOSSESSION FROM THE SUBJECT LAND IS WARRANTED.— Respondents' failure to pay leasehold rentals to the landowner also appears to have been willful and deliberate. They, in fact, do not deny – and therefore admit – the landowner's assertion that their rental arrearages have accumulated over a considerable length of time, *i.e.*, from 1985 to 2005 but rely on the fortuitous event defense, which as above-mentioned, cannot herein be sustained. x x x The term "willful" means "voluntary and intentional, but not necessarily malicious," while the term "deliberate" means that the act or omission is "intentional," "premeditated" or "fully considered." These qualities the landowner herein had successfully established in relation to respondents' default in this case. Accordingly, their dispossession from the subject land is warranted under the law.

4. ID.; ID.; ID.; ID.; DISTINGUISHED FROM FAILURE TO SUBSTANTIALLY COMPLY WITH ANY OF THE TERMS AND CONDITIONS OF THE CONTRACT OR ANY OF THE PROVISIONS OF THE AGRICULTURAL LAND REFORM CODE.— Item 2, Section 36 of RA 3844, is a separate and distinct provision from item 6 thereof. Item 2, Section 36 of RA 3844 applies to cases where the agricultural lessee **failed to substantially comply with any of the terms and conditions of the contract or any of the provisions of the Agricultural Land Reform Code**, unless his failure is caused by fortuitous event or *force majeure*; whereas item 6 refers to cases where t**he agricultural lessee does not pay the leasehold rental when it falls due, provided that the failure to pay is not due to crop failure to the extent of seventy-five *per centum* as a result of a fortuitous event. As the present dispute involves the non-payment of leasehold rentals, it is item 6 – and not item 2 – of the same provision which should apply**. x x x [T]he Court so holds that **cases covering an agricultural lessee's non-payment of leasehold rentals should be examined under the parameters of item 6, Section 36 of RA 3844 and not under item 2 of the same provision which applies to other violations of the agricultural**

leasehold contract or the provisions of the Agricultural Land Reform Code, excluding the failure to pay rent. In these latter cases, substantial compliance may – as above explained – be raised as a defense against dispossession.

5. ID.; ID.; ID.; ID.; RULE THAT AN ACTION TO ENFORCE ANY CAUSE OF ACTION UNDER RA 3844 SHALL BE BARRED IF NOT COMMENCED WITHIN THREE YEARS AFTER IT ACCRUED; APPLIED IN CASE AT BAR.— In fine, the Court affirms the DARAB Decision granting the petition for dispossession with the modification, however, on the amount of rental arrearages to be paid considering that **an action to enforce any cause of action under RA 3844 shall be barred if not commenced within three (3) years after it accrued**. Accordingly, respondents are held liable to pay petitioner only the pertinent rental arrearages reckoned from the last three (3) cropping years prior to the filing of the petition before the Office of the PARAD on March 8, 2006 or from the May 2003 cropping season, until they have vacated the subject land.

APPEARANCES OF COUNSEL

Bayani P. Dalangin for respondents.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] are the Decision[2] dated June 4, 2009 and the Resolution[3] dated November 5, 2009 of the Court of Appeals (CA) in CA-G.R. SP No. 105438 which set aside the Decision[4] dated December 13, 2007 and the

[1] *Rollo*, pp. 3-35.

[2] *Id*. at 39-50. Penned by Associate Justice Jose L. Sabio, Jr., with Associate Justices Vicente S.E. Veloso and Ricardo R. Rosario, concurring.

[3] *Id*. at 52-53.

[4] *Id*. at 84-90. Penned by Assistant Secretary Augusto P. Quijano, with Undersecretary Renato F. Herrera and Assistant Secretaries Delfin B. Samson and Edgar A. Igano, concurring.

Resolution[5] dated March 13, 2008 of the Department of Agrarian Reform Adjudication Board (DARAB) in DARAB Case No. 14727, holding that the tenancy relations between petitioner Eufrocina Nieves (petitioner) and respondents Ernesto Duldulao (Ernesto) and Felipe Pajarillo (Felipe) remain valid and enforceable.

The Facts

Petitioner is the owner of a piece of agricultural rice land with an area of six (6) hectares, more or less, located at Dulong Bayan, Quezon, Nueva Ecija (subject land). Ernesto and Felipe (respondents) are tenants and cultivators of the subject land[6] who are obligated to each pay leasehold rentals of 45 cavans of palay for each cropping season,[7] one in May and the other in December.[8]

Claiming that Ernesto and Felipe failed to pay their leasehold rentals since 1985 which had accumulated to 446.5 and 327 cavans of palay, respectively, petitioner filed a petition on March 8, 2006 before the DARAB Office of the Provincial Adjudicator (PARAD), seeking the ejectment of respondents from the subject land for non-payment of rentals.[9]

Prior to the filing of the case, a mediation was conducted before the Office of the Municipal Agrarian Reform Officer and Legal Division in 2005 where respondents admitted being in default in the payment of leasehold rentals equivalent to 200 and 327 cavans of palay, respectively, and promised to pay the same.[10]

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[5] CA *rollo*, pp. 34-35. Penned by Assistant Secretary Augusto P. Quijano, with Assistant Secretaries Delfin B. Samson, Edgar A. Igano, and Patricia Rualo-Bello, concurring.

[6] *Rollo*, pp. 79 and 85.

[7] *Id.* at 46.

[8] CA *rollo*, p. 140.

[9] *Rollo*, p. 79.

[10] See Mediation Report dated March 14, 2005 issued by Legal Officer III Pablo C. Canlas; DAR records, p. 1.

Subsequently, however, in his answer to the petition, Ernesto claimed that he merely inherited a portion of the back leasehold rentals from his deceased father, Eugenio Duldulao, but proposed to pay the arrearages in four (4) installments beginning the *dayatan* cropping season in May 2006.[11] On the other hand, Felipe denied incurring any back leasehold rentals, but at the same time proposed to pay whatever there may be in six (6) installments, also beginning the *dayatan* cropping season in May 2006.[12] Both respondents manifested their lack of intention to renege on their obligations to pay the leasehold rentals due, explaining that the supervening calamities, such as the flashfloods and typhoons that affected the area prevented them from complying.[13]

The PARAD's Ruling

In a Decision[14] dated July 6, 2006, the PARAD declared that the tenancy relations between the parties had been severed by respondents' failure to pay their back leasehold rentals, thereby ordering them to vacate the subject land and fulfill their rent obligations.

With respect to Ernesto, the PARAD did not find merit in his claim that the obligation of his father for back leasehold rentals, amounting to 446 cavans of palay, had been extinguished by his death. It held that upon the death of the leaseholder, the leasehold relationship continues between the agricultural lessor and the surviving spouse or next of kin of the deceased as provided by law; hence, the leasehold rent obligations subsist and should be paid.[15]

As for Felipe, the PARAD found that his unpaid leasehold rentals had accumulated to 327 cavans of palay, and that his

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[11] See Answer dated March 27, 2006; *id*. at 32-33.

[12] See Answer dated March 29, 2006; *id*. at 36-37.

[13] *Rollo*, p. 42.

[14] *Id*. at 79-83. Penned by Presiding Adjudicator Marvin V. Bernal.

[15] *Id*. at 80-81.

refusal to pay was willful and deliberate, warranting his ejectment from the subject land.[16]

Dissatisfied, respondents elevated the case on appeal.

The DARAB Proceedings

On April 16, 2007, the DARAB issued an Order[17] deputizing the DARAB Provincial Sheriff of Nueva Ecija and the Municipal Agrarian Reform Officer of Talavera, Nueva Ecija to supervise the harvest of palay over the subject land. However, when the Sheriff proceeded to implement the same on April 27, 2007, he found that the harvest had been completed and the proceeds therefrom had been used to pay respondents' other indebtedness.[18]

On December 13, 2007, the DARAB issued a Decision[19] affirming the findings of the PARAD that indeed, respondents were remiss in paying their leasehold rentals and that such omission was willful and deliberate, justifying their ejectment from the subject land.[20]

Unperturbed, respondents elevated the matter to the CA.

The CA Ruling

In a Decision[21] dated June 4, 2009, the CA granted respondents' petition for review, thereby reversing the ruling of the DARAB terminating the tenancy relations of the parties. While it found respondents to have been remiss in the payment of their leasehold rentals, it held that the omission was not deliberate or willful. Notwithstanding the DARAB's findings with respect to the amounts of respondents' rental arrearages, the CA gave full

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[16] *Id*. at 82.

[17] DAR records, pp. 162-163. Issued by Assistant Secretaries Augusto P. Quijano, Edgar A. Igano, and Patricia Rualo-Bello.

[18] See Implementation Report dated April 30, 2007 issued by DARAB Provincial Sheriff Delfin Acosta Gaspar; *id*. at 159.

[19] *Rollo*, pp. 84-90.

[20] *Id*. at 89.

[21] *Id*. at 39-50.

credence to their assertions and observed that Felipe failed to pay only 293 cavans of palay or 16.28% of the total leasehold rentals due from 1985 to 2005, while Ernesto failed to pay only 107.5 cavans of palay or 6% of the total leasehold rentals.[22] Relying on the Court's ruling in the case of *De Tanedo v. De La Cruz*[23] (*De Tanedo*), the CA then concluded that respondents substantially complied with their obligation to pay leasehold rentals, and, hence, could not be ejected from the subject land despite their failure to meet their rent obligations as they became due.

Aggrieved, petitioner filed a motion for reconsideration which was, however, denied by the CA in a Resolution[24] dated November 5, 2009, hence this petition.

The Issue Before the Court

The sole issue for the Court's resolution is whether or not the CA correctly reversed the DARAB's ruling ejecting respondents from the subject land.

The Court's Ruling

The petition is meritorious.

Agricultural lessees, being entitled to security of tenure, may be ejected from their landholding only on the grounds provided by law.[25] These grounds – the existence of which is to be proven by the agricultural lessor in a particular case[26] – are enumerated

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[22] *Id*. at 46-47.

[23] 143 Phil. 61 (1970).

[24] *Rollo*, pp. 52-53.

[25] Section 7 of RA 3844 provides:

Section 7. *Tenure of Agricultural Leasehold Relation.* – The agricultural leasehold relation once established shall confer upon the agricultural lessee the right to continue working on the landholding until such leasehold relation is extinguished. The agricultural lessee shall be entitled to security of tenure on his landholding and cannot be ejected therefrom unless authorized by the Court for causes herein provided.

[26] Section 37 of RA 3844 provides:

in Section 36 of Republic Act No. (RA) 3844,[27] otherwise known as the "Agricultural Land Reform Code," which read as follows:

Section 36. *Possession of Landholding; Exceptions.*— Notwithstanding any agreement as to the period or future surrender, of the land, an agricultural lessee shall continue in the enjoyment and possession of his landholding except when his **dispossession has been authorized by the Court in a judgment that is final and executory** if after due hearing it is shown that:

(1) The landholding is declared by the department head upon recommendation of the National Planning Commission to be suited for residential, commercial, industrial or some other urban purposes: Provided, That the agricultural lessee shall be entitled to disturbance compensation equivalent to five times the average of the gross harvests on his landholding during the last five preceding calendar years; (as amended by RA 6389)

(2) The agricultural lessee failed to substantially comply with any of the terms and conditions of the contract or any of the provisions of this Code unless his failure is caused by fortuitous event or *force majeure*;

(3) The agricultural lessee planted crops or used the landholding for a purpose other than what had been previously agreed upon;

(4) The agricultural lessee failed to adopt proven farm practices as determined under paragraph 3 of Section twenty-nine;

(5) The land or other substantial permanent improvement thereon is substantially damaged or destroyed or has unreasonably deteriorated through the fault or negligence of the agricultural lessee;

(6) The agricultural lessee does not pay the lease rental when it falls due: *Provided*, That if the non-payment of the rental shall be due to crop failure to the extent of seventy-five *per centum* as

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Section 37. *Burden of Proof.* – The burden of proof to show the existence of a lawful cause for the ejectment of an agricultural lessee shall rest upon the agricultural lessor.

[27] Entitled "AN ACT TO ORDAIN THE AGRICULTURAL LAND REFORM CODE AND TO INSTITUTE LAND REFORMS IN THE PHILIPPINES, INCLUDING THE ABOLITION OF TENANCY AND THE CHANNELING OF CAPITAL INTO INDUSTRY, PROVIDE FOR THE NECESSARY IMPLEMENTING AGENCIES, APPROPRIATE FUNDS THEREFOR AND FOR OTHER PURPOSES."

a result of a fortuitous event, the non-payment shall not be a ground for dispossession, although the obligation to pay the rental due that particular crop is not thereby extinguished; or

(7) The lessee employed a sub-lessee on his landholding in violation of the terms of paragraph 2 of Section twenty-seven. (Emphases supplied)

To eject the agricultural lessee for failure to pay the leasehold rentals under item 6 of the above-cited provision, jurisprudence instructs that the same must be **willful and deliberate** in order to warrant the agricultural lessee's dispossession of the land that he tills. As explained in the case of *Sta. Ana v. Spouses Carpo*:[28]

Under Section 37 of Republic Act No. 3844, as amended, coupled with the fact that the respondents are the complainants themselves, the burden of proof to show the existence of a lawful cause for the ejectment of the petitioner as an agricultural lessee rests upon the respondents as agricultural lessors. This proceeds from the principle that a tenancy relationship, once established, entitles the tenant to security of tenure. Petitioner can only be ejected from the agricultural landholding on grounds provided by law. Section 36 of the same law pertinently provides:

> Sec. 36. *Possession of Landholding; Exceptions*. – Notwithstanding any agreement as to the period or future surrender, of the land, an agricultural lessee shall continue in the enjoyment and possession of his landholding except when his dispossession has been authorized by the Court in a judgment that is final and executory if after due hearing it is shown that:
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> x x x x x x x x x
>
> (6) The agricultural lessee does not pay the lease rental when it falls due: *Provided*, That if the non-payment of the rental shall be due to crop failure to the extent of seventy-five *per centum* as a result of a fortuitous event, the non-payment shall not be a ground for dispossession, although the obligation to pay the rental due that particular crop is not thereby extinguished;

[28] 593 Phil. 108 (2008).

x x x x x x x x x

Respondents failed to discharge such burden. **The agricultural tenant's failure to pay the lease rentals must be willful and deliberate in order to warrant his dispossession of the land that he tills**.

Petitioner's counsel opines that there appears to be no decision by this Court on the matter; he thus submits that we should use the CA decision in *Cabero v. Caturna*. This is not correct. In an *En Banc* Decision by this Court in *Roxas y Cia v. Cabatuando, et al*.,[29] we held that under our law and jurisprudence, **mere failure of a tenant to pay the landholder's share does not necessarily give the latter the right to eject the former when there is lack of deliberate intent on the part of the tenant to pay**. This ruling has not been overturned.

x x x[30] (Emphases supplied; citations omitted)

In the present case, petitioner seeks the dispossession of respondents from the subject land on the ground of non-payment of leasehold rentals based on item 6, Section 36 of RA 3844. While **respondents indeed admit that they failed to pay the full amount of their respective leasehold rentals as they become due**, they claim that their default was on account of the debilitating effects of calamities like flashfloods and typhoons. This latter assertion is a defense provided under the same provision which, if successfully established, allows the agricultural lessee to retain possession of his landholding. The records of this case are, however, bereft of any showing that the aforestated claim was substantiated by any evidence tending to prove the same. Keeping in mind that **bare allegations, unsubstantiated by evidence, are not equivalent to proof**,[31] the Court cannot therefore lend any credence to respondents' fortuitous event defense.

Respondents' failure to pay leasehold rentals to the landowner also appears to have been willful and deliberate. They, in fact,

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[29] 111 Phil. 737 (1961).

[30] *Sta. Ana v. Spouses Carpo, supra* note 28, at 130-131.

[31] 542 Phil. 109, 122 (2007).

do not deny – and therefore admit[32] – the landowner's assertion that their rental arrearages have accumulated over a considerable length of time, *i.e.*, from 1985 to 2005 but rely on the fortuitous event defense, which as above-mentioned, cannot herein be sustained. In the case of *Antonio v. Manahan*[33] (*Antonio*), the Court, notwithstanding the tenants' failure to prove their own fortuitous event theory, pronounced that their failure to pay the leasehold rentals was not willful and deliberate. The records in said case showed that the landowner actually rejected the rentals, which amounted only to 2 years-worth of arrearages, *i.e.*, 1993 and 2001, tendered by the tenants therein due to their supposed poor quality. This circumstance was taken by the Court together with the fact that said tenants even exerted efforts to make up for the rejected rentals through the payments made for the other years. In another case, *i.e.*, *Roxas v. Cabatuando*[34] (*Roxas*), the Court similarly held that the tenants therein did not willfully and deliberately fail to pay their leasehold rentals since they had serious doubts as to the legality of their contract with respect to their non-sharing in the coconut produce, which thus prompted them to withhold their remittances in good faith. In contrast to *Antonio* and *Roxas*, the landowner in this case never rejected any rental payment duly tendered by respondents or their predecessors-in-interest. Neither was the legality of their agricultural leasehold contract with the landowner ever put into issue so as to intimate that they merely withheld their remittances in good faith. Thus, with the fortuitous event defense taken out of the equation, and considering the examples in *Antonio* and *Roxas* whereby the elements of willfulness and deliberateness were not found to have been established, the Court is impelled to agree with the DARAB that respondents herein willfully and deliberately chose not to pay their leasehold rentals to the landowner when they fell due. The term "willful" means "voluntary and intentional, but not necessarily malicious,"[35]

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[32] See Section 11, Rule 8 of the Rules of Court.

[33] G.R. No. 176091, August 24, 2011, 656 SCRA 190.

[34] *Supra* note 29.

[35] *BLACK'S LAW DICTIONARY*, 7th Ed. (1999), p. 1593.

while the term "deliberate" means that the act or omission is "intentional," "premeditated" or "fully considered."[36] These qualities the landowner herein had successfully established in relation to respondents' default in this case. Accordingly, their dispossession from the subject land is warranted under the law.

At this juncture, the Court finds it apt to clarify that respondents' purported substantial compliance – as erroneously considered by the CA to justify its ruling against their dispossession – is applicable only under the parameters of item 2, Section 36 of RA 3844, which is a separate and distinct provision from item 6 thereof. Item 2, Section 36 of RA 3844 applies to cases where the agricultural lessee **failed to substantially comply with any of the terms and conditions of the contract or any of the provisions of the Agricultural Land Reform Code**, unless his failure is caused by fortuitous event or *force majeure*; whereas item 6 refers to cases where t**he agricultural lessee does not pay the leasehold rental when it falls due, provided that the failure to pay is not due to crop failure to the extent of seventy-five *per centum* as a result of a fortuitous event.**

As the present dispute involves the non-payment of leasehold rentals, it is item 6 – and not item 2 – of the same provision which should apply. Examining the text of **item 6**, there is no indication that the agricultural lessee's substantial compliance with his rent obligations could be raised as a defense against his dispossession. On the other hand, **item 2** states that it is only the agricultural lessee's "failure to substantially comply" with the terms and conditions of the agricultural leasehold contract or the provisions of the Agricultural Land Reform Code which is deemed as a ground for dispossession. Thus, it may be reasonably deduced that the agricultural lessee's substantial compliance negates the existence of the ground of dispossession provided under item 2. While the failure to pay leasehold rentals may be construed to fall under the general phraseology of item 2 – that is a form of non-compliance "with any of the terms

[36] *Id*. at 438.

and conditions of the contract or any of the provisions of this Code,"[37] it is a long-standing rule in statutory construction that general legislation must give way to special legislation on the same subject, and generally is so interpreted as to embrace only cases in which the special provisions are not applicable - *lex specialis derogat generali*.[38] In other words, where two statutes are of equal theoretical application to a particular case, the one specially designed therefor should prevail.[39] Thus, consistent with this principle, the Court so holds that **cases covering an agricultural lessee's non-payment of leasehold rentals should be examined under the parameters of item 6, Section 36 of RA 3844 and not under item 2 of the same provision which applies to other violations of the agricultural leasehold contract or the provisions of the Agricultural Land Reform Code, excluding the failure to pay rent**. In these latter cases, substantial compliance may – as above-explained – be raised as a defense against dispossession.

In this relation, the Court observes that the CA's reliance in the *De Tanedo* ruling was altogether misplaced for the simple reason that the substantial compliance defense in that case was actually invoked against a violation of a peculiar term and condition of the parties' agricultural leasehold contract, particularly requiring the payment of **advance** rentals "pursuant to [the agricultural lessee's] agreement with the landholders,"[40] and not his mere failure to pay the leasehold rentals regularly accruing within a particular cropping season, as in this case.

In fact, the Court, in *De Tanedo*, applied the substantial compliance defense only in relation to Section 50(b) of RA 1199,[41]

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[37] See item (2), Section 36 of RA 3844.

[38] See *Jalosjos v. Commission on Elections*, G.R. No. 205033, June 18, 2013, 698 SCRA 742, 762.

[39] *Id*.

[40] *De Tanedo*, *supra* note 23, at 63.

[41] Entitled "AN ACT TO GOVERN THE RELATIONS BETWEEN LANDHOLDERS AND TENANTS OF AGRICULTURAL LANDS (LEASEHOLDS AND SHARE TENANCY)."

otherwise known as the "Agricultural Tenancy Act of the Philippines," which is the predecessor provision of item 2, Section 36 of RA 3844. Section 50(b) of RA 1199 states that:

> Section 50. *Causes for the Dispossession of a Tenant*. – Any of the following shall be a sufficient cause for the dispossession of a tenant from his holdings:
>
> x x x x x x x x x
>
> (b) When the current tenant violates or fails to comply with any of the terms and conditions of the contract or any of the provisions of this Act: *Provided*, however, That this subsection shall not apply when the tenant has substantially complied with the contract or with the provisions of this Act.

On other hand, the predecessor provision of item 6, Section 36 of RA 3844 is Section 50(c) of RA 1199, which reads as follows:

> Section 50. *Causes for the Dispossession of a Tenant*. – Any of the following shall be a sufficient cause for the dispossession of a tenant from his holdings:
>
> x x x x x x x x x
>
> (c) The tenant's failure to pay the agreed rental or to deliver the landholder's share: *Provided*, however, That this shall not apply when the tenant's failure is caused by a fortuitous event or *force majeure*.

The Court's application of the substantial compliance defense in relation to Section 50(b) of RA 1199, as well as the agricultural lessors' failure to actually raise in their ejectment complaint the ground of failure to pay leasehold rentals, is evident from the following excerpt of the *De Tanedo* Decision:[42]

> In the decision appealed from as well as in the resolution of the Court of Appeals forwarding this case to us, it has been found that the rentals for the agricultural years 1958 to 1961, inclusive, had all been fully satisfied, although not in advance as agreed upon. This is admitted by the petitioners-appellants. **We agree with the**

[42] *De Tanedo*, *supra* note 23, at 63.

Court *a quo* that the delay in payment does not justify the drastic remedy of ejectment, considering Section 50(b) of Republic Act 1199, which states that while violation by the tenant of any of the terms and conditions of the tenancy contract shall be a ground to eject him, yet this provision shall not apply where there has been substantial compliance. With reference to the rental for the crop-year 1962-63, failure to pay the same was not alleged in the original or amended complaints below, and hence may not be considered for the first time on appeal. (Emphases and underscoring supplied)

In any case, the Court never mentioned Section 50(c) of RA 1199 in *De Tanedo*. Thus, a reading thereof only shores up the point earlier explained that the substantial compliance defense is only available in cases where the ground for dispossession is the agricultural lessee's violation of the terms and conditions of the agricultural leasehold contract or the provisions of the Agricultural Land Reform Code, and not in cases where the ground for dispossession is the agricultural lessee's failure to pay rent. Verily, agricultural leasehold rentals, as in rentals in ordinary lease contracts, constitute fixed payments which the lessor has both the right and expectation to promptly receive in consideration of being deprived of the full enjoyment and possession of his property. Unless caused by a fortuitous event, or reprieved by virtue of a finding that the non-payment of leasehold rentals was not actually willful and deliberate, there appears to be no credible justification, both in reason and in law, to deny the agricultural lessor the right to recover his property and thereby eject the agricultural lessee in the event that the latter fails to comply with his rent obligations as they fall due. Indeed, while the Constitution commands the government to tilt the balance in favor of the poor and the underprivileged whenever doubt arises in the interpretation of the law, the jural postulates of social justice should not sanction any false sympathy towards a certain class, nor be used to deny the landowner's rights,[43] as in this case.

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[43] See *Perez-Rosario v. CA*, 526 Phil. 562, 586 (2006).

In fine, the Court affirms the DARAB Decision granting the petition for dispossession with the modification, however, on the amount of rental arrearages to be paid considering that **an action to enforce any cause of action under RA 3844 shall be barred if not commenced within three (3) years after it accrued**.[44] Accordingly, respondents are held liable to pay petitioner only the pertinent rental arrearages reckoned from the last three (3) cropping years prior to the filing of the petition before the Office of the PARAD on March 8, 2006[45] or from the May 2003 cropping season, until they have vacated the subject land.

WHEREFORE, the petition is **GRANTED**. The Decision dated June 4, 2009 and the Resolution dated November 5, 2009 of the Court of Appeals in CA-G.R. SP No. 105438 are **REVERSED** and **SET ASIDE**. The Decision dated December 13, 2007 of the Department of Agrarian Reform Adjudication Board in DARAB Case No. 14727 is **REINSTATED** and **AFFIRMED** with the **MODIFICATION** ordering respondents Ernesto Duldulao and Felipe Pajarillo to pay petitioner Eufrocina Nieves the pertinent rental arrearages reckoned from the May 2003 cropping season, until they have vacated the landholding subject of this case.

SO ORDERED.

Carpio (Chairperson), Brion, del Castillo, and *Perez, JJ.*, concur.

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[44] Section 28 of RA 3844 provides:

Section 38. *Statute of Limitations.* — An action to enforce any cause of action under this Code shall be barred if not commenced within three years after such cause of action accrued.

[45] See Petition dated October 18, 2005; CA *rollo*, p. 127.

FIRST DIVISION

[G.R. No. 191390. April 2, 2014]

THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JOEL DIOQUINO *y* GARBIN,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; GUIDING PRINCIPLES.— In resolving issues pertaining to the credibility of the witnesses, this Court is guided by the following principles: (1) the reviewing court will not disturb the findings of the lower courts, unless there is a showing that the lower courts overlooked or misapplied some fact or circumstance of weight and substance that may affect the result of the case; (2) the findings of the trial court on the credibility of witnesses are entitled to great respect and even finality, as it had the opportunity to examine their demeanor when they testified on the witness stand; and (3) a witness who testifies in a clear, positive and convincing manner is a credible witness. x x x We emphasize that a trial court's assessment of a witness' credibility, when affirmed by the CA, is even conclusive and binding, if not tainted with arbitrariness or oversight of some fact or circumstance of weight or influence.

2. ID.; ID.; ID.; SWEETHEART THEORY IN RAPE CASES; DISCUSSED.— To be credible, the sweetheart theory must be corroborated by documentary, testimonial, or other evidence. Usually, these are letters, notes, photos, mementos, or credible testimonies of those who know the lovers. Appellant's defense admittedly lacks these pieces of evidence. In adopting the sweetheart theory as a defense, however, he necessarily admitted carnal knowledge of ABC, the first element of rape. This admission makes the sweetheart theory more difficult to defend, for it is not only an affirmative defense that needs convincing proof, but also after the prosecution has successfully established a *prima facie* case, the burden of evidence is shifted to the accused, who has to adduce evidence that the intercourse was consensual.

3. CRIMINAL LAW; RAPE; CIVIL DAMAGES.— As to the award of damages, the Court affirms the grant by the CA to ABC of ₱50,000 civil indemnity and ₱50,000 moral damages for each count of rape as it is in accord with prevailing jurisprudence. However, as a public example, to protect hapless individuals from molestation, we decree an award of exemplary damages in the amount of ₱30,000 in line with *People v. Pabol*. Interest at the rate of 6% per annum should likewise be imposed on all damages awarded in this case reckoned from the date of finality of this decision until fully paid.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

D E C I S I O N

VILLARAMA, JR., *J.*:

On appeal is the October 15, 2009 Decision[1] of the Court of Appeals (CA) which affirmed the June 18, 2007 Decision[2] of the Regional Trial Court (RTC), Branch 55 of Irosin, Sorsogon, convicting appellant of seven counts of simple rape of 17- year-old minor ABC.[3]

Appellant was charged with eight counts of rape allegedly committed as follows:

Criminal Case No. 1390

That on or about the 31st day of July, 1999, at barangay Gadgaron, municipality of Matnog, province of Sorsogon, Philippines, and within

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[1] *Rollo*, pp. 2-23. Penned by Associate Justice Rebecca De Guia-Salvador with Associate Justices Apolinario D. Bruselas, Jr. and Mario V. Lopez concurring. The assailed decision was rendered in CA-G.R. CR-H.C. No. 02990.

[2] CA *rollo*, pp. 30-67. Penned by Judge Adolfo G. Fajardo in Criminal Case Nos. 1390-1391.

[3] The victim's real name and other personal circumstances are withheld per *People v. Cabalquinto*, 533 Phil. 703, 709 (2006).

the jurisdiction of this Honorable Court, the above-named accused, by means of force and intimidation, did then and there, wilfully, unlawfully and feloniously, have carnal knowledge with one [ABC], a minor, against her will and without her consent.

CONTRARY TO LAW.[4]

Criminal Case No. 1391

That during the period from August 1, 1999, up to August 16, of the same year, at barangay Gadgaron, municipality of Matnog, province of Sorsogon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force and intimidation, did then and there, wilfully, unlawfully and feloniously, have carnal knowledge with one [ABC], a minor, for seven (7) consecutive times, against her will and without her consent.

CONTRARY TO LAW.[5]

Upon arraignment, appellant entered a plea of not guilty to all the charges as stated in the informations. Trial ensued.

The trial court summarized the prosecution evidence as follows:

On July 31, 1999, at around 9:00 o'clock in the evening, [ABC] went to Caloocan, Matnog, Sorsogon to attend the Induction Ceremony of the officers of the Student Council of Matnog National High School. After the induction, there was a dance which she also attended. Accused Joel Dioquino also attended the dance. She finally decided to go home at 2:00 o'clock in the morning of August 1, 1999. (TSN, p. 4, May 4, 2000 & TSN, p. 2, Aug. 16, 2000). She left the dance alone while the rest of the students coming from their place remained. (TSN, p. 3, Aug. 16, 2000) She was on her way home when she noticed the accused standing along the road. x x x Thereafter, near a coconut tree not far from the house of Adelina Garofil, the accused surprised her. (TSN, p. 4, August 16, 2000). The accused was not wearing [a] shirt at that time. Upon seeing him half-naked, she felt afraid and she decided to move back. However, she was not able to run away because as she was turning back, he held her by her shoulders. She was not able to cry for help. (TSN, pp. 6-8, *ibid.*). The accused

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[4] Records (Crim. Case No. 1390), p. 1.

[5] Records (Crim. Case No. 1391), p. 1.

boxed her on the stomach and she fell on the ground. He gave her another blow on her stomach and she lost her consciousness. When she came back to her senses, she found herself lying on the same place where the accused boxed her. (TSN, p. 5, May 4, 2000). Her pants and underwear were pulled down to her knees while her blouse was pulled up to her breasts. She found the accused on top of her. (TSN, p. 9, August 16, 2000) He was naked. His penis was still inside her vagina. She boxed him and pinched him then she pushed him away from her. She put on her clothes immediately and she started to run away. But the accused was faster than her. He was able to catch up with her and as soon as he got hold of her, he embraced and kissed her. She tried to prevent another sexual assault by biting the accused on his right neck. She has successfully detached herself from him. Then, she ran towards home. (TSN, p. 6, *ibid.*). Upon reaching home, she cried and rested inside her room. At that time, only her little brothers and sisters were in their house. (TSN, p. 7, *ibid.*).

The second incident happened on August 2, 1999. At around 6:00 o'clock in the evening, she delivered some goods to her mother's store at the Matnog pier. (TSN, p. 7, *ibid.*). She stayed there for about two (2) hours. On her way home, the accused waylaid her again near the house of Adelina Garofil. He boxed her twice on her stomach. She fell down and lost her consciousness. (TSN, p. 11, August 16, 2000) When she came back to her senses, she found the accused naked on top of her with his penis still inserted inside her vagina. (TSN, p. 9, May 4, 2000). Her shirt was pulled up to her shoulders and her pants and underwear were pulled down to her knees. (TSN, p. 12, August 16, 2000). He was moving his body on top of her and remained on that position for about 5 to 7 minutes after she has regained consciousness. He was able to consummate his sexual desire with her. She said she knew he was able to consummate because he stopped moving. (TSN, p. 14, *ibid.*). She felt the same pains the way she has experienced during the first. (TSN, p. 15, *ibid.*). She pinched him and pushed him away from her. She tried to put on her pants but the accused embraced her. Then she pushed him again and ran towards home. (TSN, p. 9, May 4, 2000). Upon reaching home, she found her brothers and sisters already asleep. Her parents were not around – her mother was at the Matnog pier selling goods while her father was in Manila. And like what she did during the first time, she entered her room and slept. (TSN, p. 10, *ibid.*).

On August 3, 1999, at about 7:00 o'clock in the evening, she came back to her mother's store at the Matnog pier and just stayed there for a while. (TSN, p. 10, *ibid.*). On her way home, she noticed the accused on the same place as before – near the house of Adelina Garofil. Upon seeing him, she took another path but the accused pursued her and was able to catch-up with her. He boxed her on her back. She fell down on the ground and then he pulled her up and slapped her. (TSN, p. 11, *ibid.*). Thereafter, he removed her clothes. He embraced her and removed her pants. She tried to resist but she was overpowered by his strength. Then he boxed her again. She fell down and lost her consciousness. When she regained her senses, she found him on top of her. The place was a nipa plantation in Gadgaron, Matnog, Sorsogon. She boxed him and asked him why he always does the same thing to her over and over again but he just smiled. (TSN, p. 12, *ibid.*). Then he spanked her and warned her not to tell the incident to her mother, otherwise, he would kill them. She noticed that his eyes were red. She got scared. When she got home, she did not tell her harrowing experience to anybody because of fear. (TSN, pp. 13-14, *ibid.*).

On August 4, 1999, she was visited at their house by his cousin [CCC]. At around 7:00 o'clock in the evening, [CCC] asked her to accompany him to the street going to his house because he was afraid to go alone. [ABC] just accompanied [CCC] up to the road. After [CCC] left, Joel Dioquino called her. (TSN, p. 14, *ibid.*). She walked away but he pursued her, grabbed her by her collar and told her that she ought to go with him. She protested but he insisted. Joel brought her to a deserted police detachment. (TSN, p. 15, *ibid.*). At the back of the detachment was the house of Oya Ading (Adelina Garofil) and x x x which was just about 15 to 20 meters away. The accused pulled her inside the dilapidated detachment, boxed her and pushed her against the wall. (TSN, p. 16, *ibid.*). Then he kissed her and removed her pants. He held her by her shoulders and laid her down. Then he mounted on top of her. When she cried, he slapped her and boxed her on her stomach and she did not know what happened next. (TSN, p. 17, *ibid.*). When she regained her consciousness, she found Joel Dioquino on top of her, his penis was still inside her vagina. She pinched and pushed him. He retaliated — he slapped her and pushed her outside the detachment. Then she left running towards home. (TSN, p. 18, *ibid.*).

On August 5, 1999 at around 6:00 o'clock in the evening, as she was getting the laundry from the house of her Kuya [DDD] which

was about 4 to 5 meters away from her house, the accused arrived. Upon seeing the accused, she entered the house and closed the door. At that time, nobody was inside the house of her Kuya [DDD]. (TSN, pp. 19 & 23, *ibid.*) The accused pushed the door and went inside. Then he held her by his left hand and suddenly pushed her against the wall. He raised her clothes and kissed her breasts. (TSN, p. 20, *ibid.*). He opened her shorts and laid her down. Then he mounted on top of her and kept on kissing her breasts going downward. Thereafter, he inserted his penis inside her vagina. She tried to push him away but he held her by her throat. She bit him and she was released. Then she boxed him on his chest and tried to leave. (TSN, p. 21, *ibid.*). He was able to grab her by her arms but she kicked him. As soon as she was extricated, she gathered the clothes which were scattered on the ground. The accused left the house. She just stayed sitting there for a while reflecting on whether she would make a revelation of what the accused was doing to her. But she was overcome by her fears. She was afraid that Joel Dioquino might kill them. So she decided to keep the matter in secret. (TSN, p. 22, *ibid.*).

x x x x x x x x x

On August 7, 1999, at around 8:00 o'clock in the evening, Joel Dioquino waylaid her again on the same place – x x x Gadgaron, Matnog, Sorsogon. He boxed her once and she fell down. (TSN, p. 2, *ibid.*). He gave her another blow and she fainted. When she regained consciousness, he was already naked and on top of her. She felt his penis inside her vagina. She pushed and bit him. He requited by slapping her. She went home running. (TSN, p. 3, *ibid.*).

At around 9:00 o'clock in the evening of August 8, 1999, the accused waylaid her on the same place. (TSN, p. 4, *ibid.*). He brought her to a welding shop. Nobody was around. He pushed her inside and boxed her twice on her stomach and consequently, she fainted. When she regained her consciousness, the accused was still on top of her. (TSN, p. 5, *ibid.*). He was naked and his penis was still inside her vagina. She pushed him and she ran away while pulling up her pants. The accused ran after her and captured her. Then he held her hands and kept on kissing her. She pushed and bit him and he fell on the fishpond. Subsequently, she ran towards her house and hid inside her room. (TSN, pp. 6-7, *ibid.*).

x x x x x x x x x

In the noon of August 16, 1999, while she was watching TV at the house of Oya Lazara, the accused hastily appeared. As soon as he arrived, he placed his hands inside the neckline of her T-shirt extending to her breasts. Then he told her, "*Come with me*." She refused and asked for help from Oya Lazara who was then sewing around. Oya admonished Joel not to persist on his plan but Joel answered back, "*You have no business to interfere*." Then Joel pulled and dragged her going to his house which was about 50 to 60 meters away. As soon as they arrived, he pushed her inside the house. (TSN, p. 9, *ibid.*). She begged for help from Joel's brothers but they did not heed. Then Joel brought her by tricycle to Naburakan. He introduced her to his relatives in Naburakan to be his wife. She protested to the introduction and even showed to his relatives the marks on her body showing that she was just forced by Joel (TSN, p. 10, *ibid.*) but they just ignored her. (TSN, p. 11, *ibid.*). In Naburakan, Joel Dioquino and the Barangay Captain of the place made her sign, against her will, a handwritten sworn statement that she voluntarily went with Joel because they were lovers. The handwritten statement was personally prepared by the Barangay Captain who was Joel's uncle. (TSN, p. 12, *ibid.*). At 10:00 o'clock in the evening, Joel's father fetched them and they were brought to the police station in the Municipal Building of Matnog where she was investigated by the police. They asked her whether she voluntarily went with Joel. Before she could answer, Joel kicked her feet as if suggesting to her that she should answer positively the question. (TSN, p. 11, *ibid.*). Accordingly, she answered "Yes." She never had the courage to tell them that it was not voluntary on her part because she was at that time surrounded by the police and the relatives of the accused. Her parents were not around during the investigation. (TSN, p. 12, *ibid.*).

x x x x x x x x x

ROSANNA B. GALERIA, 36 years old, married, Municipal Health Officer of RHU-Matnog and residing at Matnog, Sorsogon was presented by the prosecution for the purpose of explaining in open court her findings on the Medical Examination she conducted on [ABC]. (TSN, p. 2, December 13, 2000).

The good doctor noted that the abrasions on the chest of the victim were probably caused by fingernails scratches which could have been inflicted within twenty-four hours while the hematoma on her abdomen might have been inflicted within 12 to 36 hours from the time of the examination. (TSN, pp. 6-7, *ibid.*). The 3 x 3 hematoma

was probably caused by just a slight fist blow on the left part of the body of the victim. (TSN, p. 13, *ibid.*). She further noted that the lacerations at 3 o'clock and 4 o'clock positions in the gen[i]talia of the victim might have been caused by penetration. She claimed that the victim was crying when she conducted the examination and claiming that the accused was not her boyfriend. (TSN, p. 8, *ibid.*).[6]

On the other hand, appellant presented the sweetheart defense, as summarized by the CA:

> Claiming to be ABC's boyfriend, appellant took the witness stand and asserted that the alleged rapes complained against [him] were, in reality, the [mutual] acts of young lovers. Having made love to said minor two months after she became his girlfriend, appellant [claimed] that he engaged in a string of consensual sexual encounters with ABC, with whom he eloped on August 19, 1999, at her suggestion. [They initially hid] in appellant's house, [then] proceeded to Nabucaran, Matnog, Sorsogon, where his aunt, Rosalinda Galan, accompanied them to her brother, Jesus Garbin, [who was] then the Barangay Chairman of said locality. At the *barangay* hall [Jesus Garbin] prepared a handwritten document whereby ABC, by thereto affixing her signature, acknowledged the voluntariness of her elopement with appellant. Threatened with the complaint for abduction which had been, in the meantime, filed by ABC's mother, the lovers were fetched by appellant's parents and brought back to Barangay Gadgaron. Despite ABC's affirmance of her free will x x x before SPO2 Romeo Gallinera, said minor's mother purportedly concocted the rape charges [against him] because she disapproved of her daughter's relationship with appellant.[7]

The RTC found appellant guilty of seven counts of rape and sentenced him to *reclusion perpetua* for each count. The RTC further ordered appellant to indemnify ABC in the amount of ₱50,000 as civil indemnity and ₱50,000 as moral damages and to pay the costs.[8] The RTC gave credence to ABC's testimony which was characterized as candid, straightforward, and credible. The medical findings that ABC suffered abrasions on her chest,

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[6] CA *rollo*, pp. 33-36.

[7] *Rollo*, pp. 8-9.

[8] CA *rollo*, p. 67.

hematomas on her abdomen and hymenal lacerations on her genitalia at the 3, 4, and 9 o'clock positions gave further credence to ABC's testimony that the sexual intercourse were done with force and without her consent. Also, the fact that ABC did not have the courage to immediately tell her parents or the police about the rape was satisfactorily explained by her. The RTC noted that appellant successfully instilled fear upon ABC with his threat to kill ABC and her family if she told anyone about the rapes. ABC was only with her young siblings at home since her mother was always at the pier of Matnog selling goods and her father was in Manila.[9]

The RTC did not give any credence to appellant's sweetheart defense for it was admittedly not supported by any evidence of their relationship. Moreover, the existence of force and intimidation was proven by the prosecution for each of the times appellant had carnal knowledge of ABC. ABC also satisfactorily explained that she did not voluntarily sign the document she signed before appellant's uncle, and the positive answer she gave to the police when she was asked if she went voluntarily with appellant was not voluntary since she was surrounded by the police and appellant's relatives at the time and her parents were not around during the police investigation.[10]

The CA, as aforesaid, affirmed appellant's conviction for seven counts of rape but modified the monetary damages awarded. It directed appellant to pay ABC ₱50,000 as civil indemnity and ₱50,000 as moral damages for each count of rape. The CA agreed with the RTC that ABC's testimony was candid, straightforward, and credible. In trying to impute ill motive on ABC's testimony, appellant claimed that ABC's mother concocted the rape charges because she disapproved of their relationship. However, this self-serving assertion was easily debunked by his own witness, Manuel Gamit, the Barangay Chairman of Gadgaron, Matnog, Sorsogon, who testified that he helped pacify appellant who threw an uncontrollable fit because ABC's parents

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[9] *Id*. at 63-64.

[10] *Id*. at 64-65.

were forcing him to marry their daughter. The CA added that appellant failed to prove that they were really lovers. ABC's supposed acknowledgment of elopement contained in a handwritten document made by appellant's own uncle and her affirmative answer to the police investigator's question whether she went with appellant voluntarily cannot be taken as evidence of existing relationship between ABC and appellant. The CA held that the extra-judicial admissions, made in the absence of ABC's parents and in the presence of appellant's relatives and police, if given any evidentiary value at all, merely prove that she went with appellant voluntarily but does not disprove the rape.

Hence, this appeal raising the sole issue of ABC's credibility.

The Court finds the appeal without merit.

In resolving issues pertaining to the credibility of the witnesses, this Court is guided by the following principles: (1) the reviewing court will not disturb the findings of the lower courts, unless there is a showing that the lower courts overlooked or misapplied some fact or circumstance of weight and substance that may affect the result of the case; (2) the findings of the trial court on the credibility of witnesses are entitled to great respect and even finality, as it had the opportunity to examine their demeanor when they testified on the witness stand; and (3) a witness who testifies in a clear, positive and convincing manner is a credible witness.[11]

The trial judge, who had the opportunity of observing ABC's manner and demeanor on the witness stand, was convinced of her credibility: "The very candid, straightforward and credible testimony of the child victim narrates with clarity and credence how on several occasions she was sexually abused by her classmate-herein accused."[12] More importantly, she remained consistent in the midst of gruelling cross examination. The defense

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[11] *People v. Mirandilla, Jr.*, G.R. No. 186417, July 27, 2011, 654 SCRA 761, 771, citing *Estioca v. People*, 578 Phil. 853, 864 (2008).

[12] CA *rollo*, p. 40.

lawyer tried to impeach her testimony but failed to do so. We emphasize that a trial court's assessment of a witness' credibility, when affirmed by the CA, is even conclusive and binding, if not tainted with arbitrariness or oversight of some fact or circumstance of weight or influence.[13] None of the recognized exceptions justifying a reversal of the assailed Decision obtains in this instance.

Furthermore, appellant's bare invocation of the sweetheart theory cannot stand. To be credible, the sweetheart theory must be corroborated by documentary, testimonial, or other evidence.[14] Usually, these are letters, notes, photos, mementos, or credible testimonies of those who know the lovers.[15] Appellant's defense admittedly lacks these pieces of evidence. In adopting the sweetheart theory as a defense, however, he necessarily admitted carnal knowledge of ABC, the first element of rape. This admission makes the sweetheart theory more difficult to defend, for it is not only an affirmative defense that needs convincing proof, but also after the prosecution has successfully established a *prima facie* case, the burden of evidence is shifted to the accused, who has to adduce evidence that the intercourse was consensual.[16] No such evidence was presented to show that the several episodes of sexual intercourse were consensual. The medical examination done on ABC debunks any claim of appellant that he did not force himself upon ABC.

Appellant also cannot benefit from the so-called acknowledgment executed by ABC that she voluntarily went with him considering the circumstances surrounding its execution. We note that the RTC and CA correctly considered that the acknowledgment was

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[13] *Soriano v. People*, 579 Phil. 83, 97 (2008).

[14] *People v. Nogpo, Jr.*, G.R. No. 184791, April 16, 2009, 585 SCRA 725, 743.

[15] *People v. Mirandilla, Jr.*, *supra* note 11, at 771-772, citing *People v. Jimenez*, 362 Phil. 222, 233 (1999).

[16] *People v. Mirandilla, Jr.*, *id.* at 772, citing *People v. Ayuda*, 459 Phil. 173, 184 (2003); C.J.S. 32-A, § 1016, p. 626; and *People v. Nogpo, Jr.*, *supra* note 14, at 742.

written by the Barangay Captain who happened to be appellant's uncle and the acknowledgment was made without the participation of ABC and her parents. Also, only appellant's relatives were present during the execution of the document and during the initial police investigation wherein she was instructed to tell the police that she went with appellant voluntarily. In any event, as observed by the CA, even if the Court gives evidentiary weight to the document, such does not disprove rape.

As to the award of damages, the Court affirms the grant by the CA to ABC of ₱50,000 civil indemnity and ₱50,000 moral damages for each count of rape as it is in accord with prevailing jurisprudence.[17] However, as a public example, to protect hapless individuals from molestation, we decree an award of exemplary damages in the amount of ₱30,000 in line with *People v. Pabol*.[18] Interest at the rate of 6% per annum should likewise be imposed on all damages awarded in this case reckoned from the date of finality of this decision until fully paid.[19]

WHEREFORE, the Decision dated October 15, 2009 of the Court of Appeals in CA-G.R. CR-H.C. No. 02990 is **AFFIRMED**. Appellant is further ordered to pay the private offended party exemplary damages in the amount of ₱30,000. Interest at the rate of 6% per annum is likewise hereby imposed on all damages awarded in this case reckoned from the date of the finality of this decision until fully paid.

With cost against the appellant.

SO ORDERED.

Sereno, C.J. (Chairperson), Leonardo-de Castro, Bersamin, and *Reyes, JJ.,* concur.

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[17] *People v. Bang-ayan*, 534 Phil. 70, 83 (2006).

[18] G.R. No. 187084, October 12, 2009, 603 SCRA 522, 532-533.

[19] *People v. Galvez*, G.R. No. 181827, February 2, 2011, 641 SCRA 472, 485; *People v. Alverio*, G.R. No. 194259, March 16, 2011, 645 SCRA 658, 670.

FIRST DIVISION

[G.R. No. 192998. April 2, 2014]

BERNARD A. TENAZAS, JAIME M. FRANCISCO and ISIDRO G. ENDRACA, *petitioners, vs.* **R. VILLEGAS TAXI TRANSPORT and ROMUALDO VILLEGAS,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; ONLY ERRORS OF LAW ARE ALLOWED.— "Well-settled is the rule that the jurisdiction of this Court in a petition for review on *certiorari* under Rule 45 of the Revised Rules of Court is limited to reviewing only errors of law, not of fact, unless the factual findings complained of are completely devoid of support from the evidence on record, or the assailed judgment is based on a gross misapprehension of facts."

2. LABOR AND SOCIAL LEGISLATION; LABOR CASES; EMPLOYEE CLAIMING TO BE SUCH MUST SUBSTANTIATE THE SAME.— It is an oft-repeated rule that in labor cases, as in other administrative and quasi-judicial proceedings, "the quantum of proof necessary is substantial evidence, or such amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion." "[T]he burden of proof rests upon the party who asserts the affirmative of an issue." Corollarily, as Francisco was claiming to be an employee of the respondents, it is incumbent upon him to proffer evidence to prove the existence of said relationship.

3. ID.; LABOR RELATIONS; EMPLOYER-EMPLOYEE RELATIONSHIP; ELEMENTS; MAY BE ESTABLISHED BY ANY COMPETENT OR RELEVANT EVIDENCE.— "[I]n determining the presence or absence of an employer-employee relationship, the Court has consistently looked for the following incidents, to wit: *(a)* the selection and engagement of the employee; *(b)* the payment of wages; *(c)* the power of dismissal; and *(d)* the employer's power to control the employee on the means and methods by which the work is accomplished.

The last element, the so-called control test, is the most important element." There is no hard and fast rule designed to establish the aforesaid elements. Any competent and relevant evidence to prove the relationship may be admitted. Identification cards, cash vouchers, social security registration, appointment letters or employment contracts, payrolls, organization charts, and personnel lists, serve as evidence of employee status. x x x [A] mere allegation in the position paper is not tantamount to evidence.

4. ID.; ID.; ILLEGAL DISMISSAL; RELIEFS AFFORDED FOR ILLEGALLY DISMISSED EMPLOYEE.— In *Macasero v. Southern Industrial Gases Philippines*, the Court reiterated, thus: **[A]n illegally dismissed employee is entitled to two reliefs: backwages and reinstatement**. The two reliefs provided are separate and distinct. In instances where reinstatement is no longer feasible because of strained relations between the employee and the employer, separation pay is granted. In effect, an illegally dismissed employee is entitled to either reinstatement, if viable, or separation pay if reinstatement is no longer viable, and backwages. The normal consequences of respondents' illegal dismissal, then, are reinstatement without loss of seniority rights, and payment of backwages computed from the time compensation was withheld up to the date of actual reinstatement. Where reinstatement is no longer viable as an option, separation pay equivalent to one (1) month salary for every year of service should be awarded as an alternative. The payment of separation pay is in addition to payment of backwages.

5. ID.; ID.; ID.; ID.; SEPARATION PAY IS PROPER ONLY WHEN REINSTATEMENT IS NO LONGER FEASIBLE; ELUCIDATED.— [I]t is only when reinstatement is no longer feasible that the payment of separation pay is ordered in lieu thereof. For instance, if reinstatement would only exacerbate the tension and strained relations between the parties, or where the relationship between the employer and the employee has been unduly strained by reason of their irreconcilable differences, it would be more prudent to order payment of separation pay instead of reinstatement. This doctrine of strained relations, however, should not be used recklessly or applied loosely nor be based on impression alone. "It bears to stress that reinstatement is the rule and, for the exception of strained

relations to apply, it should be proved that it is likely that if reinstated, an atmosphere of antipathy and antagonism would be generated as to adversely affect the efficiency and productivity of the employee concerned. "Moreover, the existence of strained relations, it must be emphasized, is a question of fact. x x x A bare claim of strained relations by reason of termination is insufficient to warrant the granting of separation pay. Likewise, the filing of the complaint by the petitioners does not necessarily translate to strained relations between the parties. As a rule, no strained relations should arise from a valid and legal act asserting one's right. Although litigation may also engender a certain degree of hostility, the understandable strain in the parties' relation would not necessarily rule out reinstatement which would, otherwise, become the rule rather the exception in illegal dismissal cases. Thus, it was a prudent call for the CA to delete the award of separation pay and order for reinstatement instead, in accordance with the general rule stated in Article 279 of the Labor Code.

APPEARANCES OF COUNSEL

Enrique A. Joaquin for petitioners.
Urbano Palamos & Fabros for respondents.

D E C I S I O N

REYES, *J.*:

This is a petition for review on *certiorari*[1] filed under Rule 45 of the Rules of Court, assailing the Decision[2] dated March 11, 2010 and Resolution[3] dated June 28, 2010 of the Court of Appeals (CA) in CA-G.R. SP No. 111150, which affirmed with modification the Decision[4] dated June 23, 2009 of the

[1] *Rollo*, pp. 15-23.

[2] Penned by Associate Justice Ricardo R. Rosario, with Associate Justices Jose C. Reyes, Jr. and Amy C. Lazaro-Javier, concurring; *id*. at 81-90.

[3] *Id*. at 92-93.

[4] *Id*. at 66-76.

National Labor Relations Commission (NLRC) in NLRC LAC Case No. 07-002648-08.

The Antecedent Facts

On July 4, 2007, Bernard A. Tenazas (Tenazas) and Jaime M. Francisco (Francisco) filed a complaint for illegal dismissal against R. Villegas Taxi Transport and/or Romualdo Villegas (Romualdo) and Andy Villegas (Andy) (respondents). At that time, a similar case had already been filed by Isidro G. Endraca (Endraca) against the same respondents. The two (2) cases were subsequently consolidated.[5]

In their position paper,[6] Tenazas, Francisco and Endraca (petitioners) alleged that they were hired and dismissed by the respondents on the following dates:

Name	Date of Hiring	Date of Dismissal	Salary
Bernard A. Tenazas	10/1997	07/03/07	Boundary System
Jaime M. Francisco	04/10/04	06/04/07	Boundary System
Isidro G. Endraca	04/2000	03/06/06	Boundary System[7]

Relaying the circumstances of his dismissal, Tenazas alleged that on July 1, 2007, the taxi unit assigned to him was sideswiped by another vehicle, causing a dent on the left fender near the driver seat. The cost of repair for the damage was estimated at ₱500.00. Upon reporting the incident to the company, he was scolded by respondents Romualdo and Andy and was told to leave the garage for he is already fired. He was even threatened with physical harm should he ever be seen in the company's premises again. Despite the warning, Tenazas reported for work on the following day but was told that he can no longer drive any of the company's units as he is already fired.[8]

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[5] *Id*. at 59.

[6] *Id*. at 29-34.

[7] *Id*. at 29.

[8] *Id*. at 30.

Francisco, on the other hand, averred that his dismissal was brought about by the company's unfounded suspicion that he was organizing a labor union. He was instantaneously terminated, without the benefit of procedural due process, on June 4, 2007.[9]

Endraca, for his part, alleged that his dismissal was instigated by an occasion when he fell short of the required boundary for his taxi unit. He related that before he was dismissed, he brought his taxi unit to an auto shop for an urgent repair. He was charged the amount of ₱700.00 for the repair services and the replacement parts. As a result, he was not able to meet his boundary for the day. Upon returning to the company garage and informing the management of the incident, his driver's license was confiscated and was told to settle the deficiency in his boundary first before his license will be returned to him. He was no longer allowed to drive a taxi unit despite his persistent pleas.[10]

For their part, the respondents admitted that Tenazas and Endraca were employees of the company, the former being a regular driver and the latter a spare driver. The respondents, however, denied that Francisco was an employee of the company or that he was able to drive one of the company's units at any point in time.[11]

The respondents further alleged that Tenazas was never terminated by the company. They claimed that on July 3, 2007, Tenazas went to the company garage to get his taxi unit but was informed that it is due for overhaul because of some mechanical defects reported by the other driver who takes turns with him in using the same. He was thus advised to wait for further notice from the company if his unit has already been fixed. On July 8, 2007, however, upon being informed that his unit is ready for release, Tenazas failed to report back to work for no apparent reason.[12]

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[9] *Id*.

[10] *Id*.

[11] *Id*. at 36-37.

[12] *Id*. at 37-38.

As regards Endraca, the respondents alleged that they hired him as a spare driver in February 2001. They allow him to drive a taxi unit whenever their regular driver will not be able to report for work. In July 2003, however, Endraca stopped reporting for work without informing the company of his reason. Subsequently, the respondents learned that a complaint for illegal dismissal was filed by Endraca against them. They strongly maintained, however, that they could never have terminated Endraca in March 2006 since he already stopped reporting for work as early as July 2003. Even then, they expressed willingness to accommodate Endraca should he wish to work as a spare driver for the company again since he was never really dismissed from employment anyway.[13]

On May 29, 2008, the petitioners, by registered mail, filed a Motion to Admit Additional Evidence.[14] They alleged that after diligent efforts, they were able to discover new pieces of evidence that will substantiate the allegations in their position paper. Attached with the motion are the following: (a) Joint Affidavit of the petitioners;[15] (2) Affidavit of Good Faith of Aloney Rivera, a co-driver;[16] (3) pictures of the petitioners wearing company shirts;[17] and (4) Tenazas' Certification/Record of Social Security System (SSS) contributions.[18]

The Ruling of the Labor Arbiter

On May 30, 2008, the Labor Arbiter (LA) rendered a Decision,[19] which pertinently states, thus:

In the case of complainant Jaime Francisco, respondents categorically denied the existence of an employer-employee

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[13] *Id*. at 37.

[14] *Id*. at 49-50.

[15] *Id*. at 51-52.

[16] *Id*. at 53.

[17] *Id*. at 54.

[18] *Id*. at 55-56.

[19] Issued by LA Edgardo M. Madriaga; *id*. at 59-65.

relationship. In this situation, the burden of proof shifts to the complainant to prove the existence of a regular employment. Complainant Francisco failed to present evidence of regular employment available to all regular employees, such as an employment contract, company ID, SSS, withholding tax certificates, SSS membership and the like.

In the case of complainant Isidro Endraca, respondents claim that he was only an extra driver who stopped reporting to queue for available taxi units which he could drive. In fact, respondents offered him in their Position Paper on record, immediate reinstatement as extra taxi driver which offer he refused.

In case of Bernard Tenazas, he was told to wait while his taxi was under repair but he did not report for work after the taxi was repaired. Respondents[,] in their Position Paper, on record likewise, offered him immediate reinstatement, which offer he refused.

We must bear in mind that the complaint herein is one of actual dismissal. But there was no formal investigations, no show cause memos, suspension memos or termination memos were never issued. Otherwise stated, there is no proof of overt act of dismissal committed by herein respondents.

We are therefore constrained to rule that there was no illegal dismissal in the case at bar.

The situations contemplated by law for entitlement to separation pay does [sic] not apply.

WHEREFORE, premises considered, instant consolidated complaints are hereby dismissed for lack of merit.

SO ORDERED.[20]

The Ruling of the NLRC

Unyielding, the petitioners appealed the decision of the LA to the NLRC. Subsequently, on June 23, 2009, the NLRC rendered a Decision,[21] reversing the appealed decision of the LA, holding that the additional pieces of evidence belatedly submitted by

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[20] *Id*. at 64-65.

[21] *Id*. at 66-76.

the petitioners sufficed to establish the existence of employer-employee relationship and their illegal dismissal. It held, thus:

In the challenged decision, the Labor Arbiter found that it cannot be said that the complainants were illegally dismissed, there being no showing, in the first place, that the respondent [sic] terminated their services. A portion thereof reads:

> *"We must bear in mind that the complaint herein is one of actual dismissal. But there were no formal investigations, no show cause memos, suspension memos or termination memos were never issued. Otherwise stated, there is no proof of overt act of dismissal committed by herein respondents.*
>
> *We are therefore constrained to rule that there was no illegal dismissal in the case at bar."*

Issue: [W]hether or not the complainants were illegally dismissed from employment.

It is possible that the complainants' Motion to Admit Additional Evidence did not reach the Labor Arbiter's attention because he had drafted the challenged decision even before they submitted it, and thereafter, his staff attended only to clerical matters, and failed to bring the motion in question to his attention. It is now up to this Commission to consider the complainants' additional evidence. Anyway, if this Commission must consider evidence submitted for the first time on appeal (Andaya vs. NLRC, G.R. No. 157371, July 15, 2005), much more so must it consider evidence that was simply overlooked by the Labor Arbiter.

Among the additional pieces of evidence submitted by the complainants are the following: (1) joint affidavit (records, p. 51-52) of the three (3) complainants; (2) affidavit (records, p. 53) of Aloney Rivera *y* Aldo; and (3) three (3) pictures (records, p. 54) referred to by the complainant in their joint affidavit showing them wearing t-shirts bearing the name and logo of the respondent's company.

x x x x x x x x x

WHEREFORE, the decision appealed from is hereby **REVERSED**. Respondent Rom[u]aldo Villegas doing business under the name and style Villegas Taxi Transport is hereby ordered to pay the complainants the following (1) full backwages from the

date of their dismissal (July 3, 2007 for Tena[z]as, June 4, 2004 for Francisco, and March 6, 2006 for Endraca[)] up to the date of the finality of this decision[;] (2) separation pay equivalent to one month for every year of service; and (3) attorney's fees equivalent to ten percent (10%) of the total judgment awards.

SO ORDERED.[22]

On July 24, 2009, the respondents filed a motion for reconsideration but the NLRC denied the same in its Resolution[23] dated September 23, 2009.

The Ruling of the CA

Unperturbed, the respondents filed a petition for *certiorari* with the CA. On March 11, 2010, the CA rendered a Decision,[24] affirming with modification the Decision dated June 23, 2009 of the NLRC. The CA agreed with the NLRC's finding that Tenazas and Endraca were employees of the company, but ruled otherwise in the case of Francisco for failing to establish his relationship with the company. It also deleted the award of separation pay and ordered for reinstatement of Tenazas and Endraca. The pertinent portions of the decision read as follows:

At the outset, We declare that respondent Francisco failed to prove that an employer-employee relationship exists between him and R. Transport. If there is no employer-employee relationship in the first place, the duty of R. Transport to adhere to the labor standards provisions of the Labor Code with respect to Francisco is questionable.

x x x x x x x x x

Although substantial evidence is not a function of quantity but rather of quality, the peculiar environmental circumstances of the instant case demand that something more should have been proffered. Had there been other proofs of employment, such as Francisco's inclusion in R.R. Transport's payroll, this Court would have affirmed the finding of employer-employee relationship. The NLRC, therefore,

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[22] *Id*. at 71-72, 75.

[23] *Id*. at 77-79.

[24] *Id*. at 81-90.

committed grievous error in ordering R. Transport to answer for Francisco's claims.

We now tackle R. Transport's petition with respect to Tenazas and Endraca, who are both admitted to be R. Transport's employees. In its petition, R. Transport puts forth the theory that it did not terminate the services of respondents but that the latter deliberately abandoned their work. We cannot subscribe to this theory.

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Considering that the complaints for illegal dismissal were filed ***soon after*** the alleged dates of dismissal, it cannot be inferred that respondents Tenazas and Endraca intended to abandon their employment. The complainants for dismissal are, in themselves, pleas for the continuance of employment. They are incompatible with the allegation of abandonment. x x x.

For R. Transport's failure to discharge the burden of proving that the dismissal of respondents Tenazas and Endraca was for a just cause, We are constrained to uphold the NLRC's conclusion that their dismissal was not justified and that they are entitled to back wages. Because they were illegally dismissed, private respondents Tenazas and Endraca are entitled to reinstatement and back wages x x x.

x x x x x x x x x

However, R. Transport is correct in its contention that separation pay should not be awarded because reinstatement is still possible and has been offered. It is well[-]settled that separation pay is granted only in instances where reinstatement is no longer feasible or appropriate, which is not the case here.

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WHEREFORE, the *Decision* of the National Labor Relations Commission dated 23 June 2009, in NLRC LAC Case No. 07-002648-08, and its *Resolution* dated 23 September 2009 denying reconsideration thereof are **AFFIRMED** with **MODIFICATION** in that the award of Jaime Francisco's claims is **DELETED**. The separation pay granted in favor of Bernard Tenazas and Isidro Endraca is, likewise, **DELETED** and their reinstatement is ordered instead.

SO ORDERED.[25] (Citations omitted)

[25] *Id*. at 84-90.

On March 19, 2010, the petitioners filed a motion for reconsideration but the same was denied by the CA in its Resolution[26] dated June 28, 2010.

Undeterred, the petitioners filed the instant petition for review on *certiorari* before this Court on July 15, 2010.

The Ruling of this Court

The petition lacks merit.

Pivotal to the resolution of the instant case is the determination of the existence of employer-employee relationship and whether there was an illegal dismissal. Remarkably, the LA, NLRC and the CA had varying assessment on the matters at hand. The LA believed that, with the admission of the respondents, there is no longer any question regarding the status of both Tenazas and Endraca being employees of the company. However, he ruled that the same conclusion does not hold with respect to Francisco whom the respondents denied to have ever employed or known. With the respondents' denial, the burden of proof shifts to Francisco to establish his regular employment. Unfortunately, the LA found that Francisco failed to present sufficient evidence to prove regular employment such as company ID, SSS membership, withholding tax certificates or similar articles. Thus, he was not considered an employee of the company. Even then, the LA held that Tenazas and Endraca could not have been illegally dismissed since there was no overt act of dismissal committed by the respondents.[27]

On appeal, the NLRC reversed the ruling of the LA and ruled that the petitioners were all employees of the company. The NLRC premised its conclusion on the additional pieces of evidence belatedly submitted by the petitioners, which it supposed, have been overlooked by the LA owing to the time when it was received by the said office. It opined that the said pieces of evidence are sufficient to establish the circumstances of their illegal termination. In particular, it noted that in the affidavit of the

[26] *Id*. at 92-93.

[27] *Id*. at 64-65.

petitioners, there were allegations about the company's practice of not issuing employment records and this was not rebutted by the respondents. It underscored that in a situation where doubt exists between evidence presented by the employer and the employee, the scales of justice must be tilted in favor of the employee. It awarded the petitioners with: (1) full backwages from the date of their dismissal up to the finality of the decision; (2) separation pay equivalent to one month of salary for every year of service; and (3) attorney's fees.

On petition for *certiorari*, the CA affirmed with modification the decision of the NLRC, holding that there was indeed an illegal dismissal on the part of Tenazas and Endraca but not with respect to Francisco who failed to present substantial evidence, proving that he was an employee of the respondents. The CA likewise dismissed the respondents' claim that Tenazas and Endraca abandoned their work, asseverating that immediate filing of a complaint for illegal dismissal and persistent pleas for continuance of employment are incompatible with abandonment. It also deleted the NLRC's award of separation pay and instead ordered that Tenazas and Endraca be reinstated.[28]

"Well-settled is the rule that the jurisdiction of this Court in a petition for review on *certiorari* under Rule 45 of the Revised Rules of Court is limited to reviewing only errors of law, not of fact, unless the factual findings complained of are completely devoid of support from the evidence on record, or the assailed judgment is based on a gross misapprehension of facts."[29] The Court finds that none of the mentioned circumstances is present in this case.

In reviewing the decision of the NLRC, the CA found that no substantial evidence was presented to support the conclusion that Francisco was an employee of the respondents and accordingly modified the NLRC decision. It stressed that with

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[28] *Id*. at 87-89.

[29] *"J" Marketing Corporation v. Taran*, G.R. No. 163924, June 18, 2009, 589 SCRA 428, 437, citing *Ramos v. Court of Appeals*, G.R. No. 145405, June 29, 2004, 433 SCRA 177, 182.

the respondents' denial of employer-employee relationship, it behooved Francisco to present substantial evidence to prove that he is an employee before any question on the legality of his supposed dismissal becomes appropriate for discussion. Francisco, however, did not offer evidence to substantiate his claim of employment with the respondents. Short of the required quantum of proof, the CA correctly ruled that the NLRC's finding of illegal dismissal and the monetary awards which necessarily follow such ruling lacked factual and legal basis and must therefore be deleted.

The action of the CA finds support in *Anonas Construction and Industrial Supply Corp., et al. v. NLRC, et al.*,[30] where the Court reiterated:

> [J]udicial review of decisions of the NLRC *via* petition for *certiorari* under Rule 65, as a general rule, is confined only to issues of lack or excess of jurisdiction and grave abuse of discretion on the part of the NLRC. The CA does not assess and weigh the sufficiency of evidence upon which the LA and the NLRC based their conclusions. The issue is limited to the determination of whether or not the NLRC acted without or in excess of its jurisdiction, or with grave abuse of discretion in rendering the resolution, **except if the findings of the NLRC are not supported by substantial evidence**.[31] (Citation omitted and emphasis ours)

It is an oft-repeated rule that in labor cases, as in other administrative and quasi-judicial proceedings, "the quantum of proof necessary is substantial evidence, or such amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion."[32] "[T]he burden of proof rests upon the party who asserts the affirmative of an issue."[33] Corollarily, as

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[30] 590 Phil. 400 (2008).

[31] *Id*. at 406.

[32] *Antiquina v. Magsaysay Maritime Corporation*, G.R. No. 168922, April 13, 2011, 648 SCRA 659, 675, citing *National Union of Workers in Hotels, Restaurants and Allied Industries-Manila Pavillion Hotel Chapter v. NLRC*, G.R. No. 179402, September 30, 2008, 567 SCRA 291, 305.

[33] *Id*.

Francisco was claiming to be an employee of the respondents, it is incumbent upon him to proffer evidence to prove the existence of said relationship.

"[I]n determining the presence or absence of an employer-employee relationship, the Court has consistently looked for the following incidents, to wit: (*a*) the selection and engagement of the employee; (*b*) the payment of wages; (*c*) the power of dismissal; and (*d*) the employer's power to control the employee on the means and methods by which the work is accomplished. The last element, the so-called control test, is the most important element."[34]

There is no hard and fast rule designed to establish the aforesaid elements. Any competent and relevant evidence to prove the relationship may be admitted. Identification cards, cash vouchers, social security registration, appointment letters or employment contracts, payrolls, organization charts, and personnel lists, serve as evidence of employee status.[35]

In this case, however, Francisco failed to present any proof substantial enough to establish his relationship with the respondents. He failed to present documentary evidence like attendance logbook, payroll, SSS record or any personnel file that could somehow depict his status as an employee. Anent his claim that he was not issued with employment records, he could have, at least, produced his social security records which state his contributions, name and address of his employer, as his co-petitioner Tenazas did. He could have also presented testimonial evidence showing the respondents' exercise of control over the means and methods by which he undertakes his work. This is imperative in light of the respondents' denial of his employment and the claim of another taxi operator, Emmanuel Villegas (Emmanuel), that he was his employer. Specifically,

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[34] *Jao v. BCC Products Sales, Inc.*, G.R. No. 163700, April 18, 2012, 670 SCRA 38, 49, citing *Abante, Jr. v. Lamadrid Bearing & Parts Corp.*, G.R. No. 159890, May 28, 2004, 430 SCRA 368, 379.

[35] *Meteoro v. Creative Creatures, Inc.*, G.R. No. 171275, July 13, 2009, 592 SCRA 481, 492.

in his Affidavit,[36] Emmanuel alleged that Francisco was employed as a spare driver in his taxi garage from January 2006 to December 2006, a fact that the latter failed to deny or question in any of the pleadings attached to the records of this case. The utter lack of evidence is fatal to Francisco's case especially in cases like his present predicament when the law has been very lenient in not requiring any particular form of evidence or manner of proving the presence of employer-employee relationship.

In *Opulencia Ice Plant and Storage v. NLRC*,[37] this Court emphasized, thus:

> No particular form of evidence is required to prove the existence of an employer-employee relationship. Any competent and relevant evidence to prove the relationship may be admitted. For, if only documentary evidence would be required to show that relationship, no scheming employer would ever be brought before the bar of justice, as no employer would wish to come out with any trace of the illegality he has authored considering that it should take much weightier proof to invalidate a written instrument.[38]

Here, Francisco simply relied on his allegation that he was an employee of the company without any other evidence supporting his claim. Unfortunately for him, a mere allegation in the position paper is not tantamount to evidence.[39] Bereft of any evidence, the CA correctly ruled that Francisco could not be considered an employee of the respondents.

The CA's order of reinstatement of Tenazas and Endraca, instead of the payment of separation pay, is also well in accordance with prevailing jurisprudence. In *Macasero v. Southern Industrial Gases Philippines*,[40] the Court reiterated, thus:

> **[A]n illegally dismissed employee is entitled to two reliefs: backwages and reinstatement**. The two reliefs provided are separate

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[36] CA *rollo*, p. 106.

[37] G.R. No. 98368, December 15, 1993, 228 SCRA 473.

[38] *Id*. at 478.

[39] *Martinez v. NLRC*, 339 Phil. 176, 183 (1997).

[40] G.R. No. 178524, January 30, 2009, 577 SCRA 500.

and distinct. In instances where reinstatement is no longer feasible because of strained relations between the employee and the employer, separation pay is granted. In effect, an illegally dismissed employee is entitled to either reinstatement, if viable, or separation pay if reinstatement is no longer viable, and backwages.

The normal consequences of respondents' illegal dismissal, then, are reinstatement without loss of seniority rights, and payment of backwages computed from the time compensation was withheld up to the date of actual reinstatement. Where reinstatement is no longer viable as an option, separation pay equivalent to one (1) month salary for every year of service should be awarded as an alternative. The payment of separation pay is in addition to payment of backwages.[41] (Emphasis supplied)

Clearly, it is only when reinstatement is no longer feasible that the payment of separation pay is ordered in lieu thereof. For instance, if reinstatement would only exacerbate the tension and strained relations between the parties, or where the relationship between the employer and the employee has been unduly strained by reason of their irreconcilable differences, it would be more prudent to order payment of separation pay instead of reinstatement.[42]

This doctrine of strained relations, however, should not be used recklessly or applied loosely[43] nor be based on impression alone. "It bears to stress that reinstatement is the rule and, for the exception of strained relations to apply, it should be proved that it is likely that if reinstated, an atmosphere of antipathy and antagonism would be generated as to adversely affect the efficiency and productivity of the employee concerned."[44]

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[41] *Id*. at 507, citing *Mt. Carmel College v. Resuena*, 561 Phil. 620, 644 (2007).

[42] *Cabigting v. San Miguel Foods, Inc.*, G.R. No. 167706, November 5, 2009, 605 SCRA 14, 23.

[43] *Pentagon Steel Corporation v. Court of Appeals*, G.R. No. 174141, June 26, 2009, 591 SCRA 160, 176.

[44] *Supra* note 42, at 25-26.

Moreover, the existence of strained relations, it must be emphasized, is a question of fact. In *Golden Ace Builders v. Talde*,[45] the Court underscored:

> **Strained relations must be demonstrated as a fact**, however, to be adequately supported by evidence—substantial evidence to show that the relationship between the employer and the employee is indeed *strained* as a necessary consequence of the judicial controversy.[46] (Citations omitted and emphasis ours)

After a perusal of the NLRC decision, this Court failed to find the factual basis of the award of separation pay to the petitioners. The NLRC decision did not state the facts which demonstrate that reinstatement is no longer a feasible option that could have justified the alternative relief of granting separation pay instead.

The petitioners themselves likewise overlooked to allege circumstances which may have rendered their reinstatement unlikely or unwise and even prayed for reinstatement alongside the payment of separation pay in their position paper.[47] A bare claim of strained relations by reason of termination is insufficient to warrant the granting of separation pay. Likewise, the filing of the complaint by the petitioners does not necessarily translate to strained relations between the parties. As a rule, no strained relations should arise from a valid and legal act asserting one's right.[48] Although litigation may also engender a certain degree of hostility, the understandable strain in the parties' relation would not necessarily rule out reinstatement which would, otherwise, become the rule rather the exception in illegal dismissal cases.[49] Thus, it was a prudent call for the CA to delete the

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[45] G.R. No. 187200, May 5, 2010, 620 SCRA 283.

[46] *Id*. at 290.

[47] *Rollo*, p. 33.

[48] *Supra* note 42, at 24, citing *Globe-Mackay Cable and Radio Corporation v. NLRC*, G.R. No. 82511, March 3, 1992, 206 SCRA 701, 712.

[49] *Leopard Security and Investigation Agency v. Quitoy*, G.R. No. 186344, February 20, 2013, 691 SCRA 440, 452.

award of separation pay and order for reinstatement instead, in accordance with the general rule stated in Article 279[50] of the Labor Code.

Finally, the Court finds the computation of the petitioners' backwages at the rate of ₱800.00 daily reasonable and just under the circumstances. The said rate is consistent with the ruling of this Court in *Hyatt Taxi Services, Inc. v. Catinoy*,[51] which dealt with the same matter.

WHEREFORE, in view of the foregoing disquisition, the petition for review on *certiorari* is **DENIED**. The Decision dated March 11, 2010 and Resolution dated June 28, 2010 of the Court of Appeals in CA-G.R. SP No. 111150 are **AFFIRMED**.

SO ORDERED.

Sereno, C.J. (Chairperson), Leonardo-de Castro, Bersamin, and *Villarama, Jr., JJ.,* concur.

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[50] Article 279. *Security of Tenure*. – In cases of regular employment, the employer shall not terminate the services of an employee except for a just cause or when authorized by this Title. An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement.

[51] 412 Phil. 295 (2001).

FIRST DIVISION

[G.R. Nos. 196280 & 196286. April 2, 2014]

UNIVERSIDAD DE STA. ISABEL, *petitioner, vs.* **MARVIN-JULIAN L. SAMBAJON, JR.,** *respondent.*

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; NLRC RULES OF PROCEDURE; APPEALS; LIMITED TO REVIEWING ISSUES RAISED ON APPEAL; ISSUES NOT INCLUDED THEREIN ARE FINAL AND EXECUTORY.—** Section 4(d), Rule VI of the 2005 Revised Rules of Procedure of the NLRC, which was in force at the time petitioner appealed the Labor Arbiter's decision, expressly provided that, on appeal, the NLRC shall limit itself only to the specific issues that were elevated for review. x x x We have clarified that the clear import of the aforementioned procedural rule is that the NLRC shall, in cases of perfected appeals, limit itself to reviewing those issues which are raised on appeal. As a consequence thereof, any other issues which were not included in the appeal shall become final and executory.

2. **ID.; TERMINATION OF EMPLOYMENT; PROBATIONARY EMPLOYMENT; ELUCIDATED.—** A probationary employee is one who is on trial by the employer during which the employer determines whether or not said employee is qualified for permanent employment. A probationary appointment is made to afford the employer an opportunity to observe the fitness of a probationary employee while at work, and to ascertain whether he will become a proper and efficient employee. The word probationary as used to describe the period of employment implies the purpose of the term or period, but not its length. It is well settled that the employer has the right or is at liberty to choose who will be hired and who will be denied employment. In that sense, it is within the exercise of the right to select his employees that the employer may set or fix a probationary period within which the latter may test and observe the conduct of the former before hiring him permanently. The law, however, regulates the exercise of this prerogative to fix the period of probationary employment. While there is no statutory cap on

the minimum term of probation, the law sets a maximum "trial period" during which the employer may test the fitness and efficiency of the employee.

3. ID.; ID.; ID.; PERIOD OF PROBATIONARY EMPLOYMENT. — Article 281 of the Labor Code provides: **ART. 281. Probationary Employment.** – Probationary employment shall not exceed six (6) months from the date the employee started working, unless it is covered by an apprenticeship agreement stipulating a longer period. The services of an employee who has been engaged on a probationary basis may be terminated for a just cause or when he fails to qualify as a regular employee in accordance with reasonable standards made known by the employer to the employee at the time of his engagement. An employee who is allowed to work after a probationary period shall be considered a regular employee.

4. ID.; ID.; ID.; PROBATIONARY EMPLOYMENT OF TEACHERS IN PRIVATE SCHOOLS IS GOVERNED BY THE MANUAL OF REGULATIONS FOR PRIVATE SCHOOLS; PROBATIONARY PERIOD.— The probationary employment of teachers in private schools is not governed purely by the Labor Code. The Labor Code is *supplemented* with respect to the period of probation by special rules found in the Manual of Regulations for Private Schools. On the matter of *probationary period*, Section 92 of the 1992 Manual of Regulations for Private Schools regulations states: Section 92. *Probationary Period.* – Subject in all instances to compliance with the Department and school requirements, **the probationary period for academic personnel shall not be more than** three (3) consecutive years of satisfactory service for those in the elementary and secondary levels, **six (6) consecutive regular semesters of satisfactory service for those in the tertiary level**, and nine (9) consecutive trimesters of satisfactory service for those in the tertiary level where collegiate courses are offered on a trimester basis. Thus, it is the Manual of Regulations for Private Schools, and not the Labor Code, that determines whether or not a faculty member in an educational institution has attained regular or permanent status. Section 93 of the 1992 Manual of Regulations for Private Schools provides that full-time teachers who have satisfactorily completed their probationary period shall be considered regular or permanent.

5. ID.; ID.; ID.; ID.; ID.; PROBATIONARY PERIOD STANDS UNLESS OTHERWISE REDUCED.— There can be no dispute that the period of probation may be reduced if the employer, convinced of the fitness and efficiency of a probationary employee, voluntarily extends a permanent appointment even before the three-year period ends. Conversely, if the purpose sought by the employer is neither attained nor attainable within the said period, the law does not preclude the employer from terminating the probationary employment on justifiable ground; or, a shorter probationary period may be incorporated in a collective bargaining agreement. But absent any circumstances which unmistakably show that an abbreviated probationary period has been agreed upon, the three-year probationary term governs. x x x As we made clear in the afore-cited case of *Magis Young Achievers' Learning Center*, the teacher remains under probation for the entire duration of the three-year period. Subsequently, in the case of *Mercado v. AMA Computer College-Parañaque City, Inc.* the Court, speaking through Justice Arturo D. Brion, recognized the right of respondent school to determine for itself that it shall use fixed-term employment contracts as its medium for hiring its teachers. Nevertheless, the Court held that the teachers' probationary status should not be disregarded simply because their contracts were fixed-term.

6. ID.; ID.; ID.; ILLEGAL DISMISSAL; GROUNDS FOR TERMINATION.— Notwithstanding the limited engagement of probationary employees, they are entitled to constitutional protection of security of tenure during and before the end of the probationary period. The services of an employee who has been engaged on probationary basis may be terminated for any of the following: (a) a just or (b) an authorized cause; and (c) when he fails to qualify as a regular employee in accordance with reasonable standards prescribed by the employer. Thus, while no vested right to a permanent appointment had as yet accrued in favor of respondent since he had not completed the prerequisite three-year period (six consecutive semesters) necessary for the acquisition of permanent status as required by the Manual of Regulations for Private Schools — which has the force of law — he enjoys a limited tenure. During the said probationary period, he cannot be terminated except for just or authorized causes, or if he fails to qualify in accordance

with reasonable standards prescribed by petitioner for the acquisition of permanent status of its teaching personnel.

7. ID.; ID.; ID.; ID.; CASE AT BAR.— In a letter dated February 26, 2005, petitioner terminated the services of respondent stating that his probationary employment as teacher will no longer be renewed upon its expiry on March 31, 2005, respondent's fifth semester of teaching. No just or authorized cause was given by petitioner. Prior to this, respondent had consistently achieved above average rating based on evaluation by petitioner's officials and students. He had also been promoted to the rank of Associate Professor after finishing his master's degree course on his third semester of teaching. Clearly, respondent's termination after five semesters of satisfactory service was illegal. Respondent therefore is entitled to continue his three-year probationary period, such that from March 31, 2005, his probationary employment is deemed renewed for the following semester (1st semester of SY 2005-2006). However, given the discordant relations that had arisen from the parties' dispute, it can be inferred with certainty that petitioner had opted not to retain respondent in its employ beyond the three-year period. On the appropriate relief and damages, we adhere to our disposition in *Magis Young Achievers' Learning Center.* x x x Petitioner Universidad de Sta. Isabel is hereby **DIRECTED to PAY** respondent Marvin-Julian L. Sambajon, Jr. back wages corresponding to his full monthly salaries for one semester (1st semester of SY 2005-2006) and pro-rated 13th month pay.

APPEARANCES OF COUNSEL

Padilla Law Office for petitioner.
Morandarte & Rivero Law Office for respondent.

D E C I S I O N

VILLARAMA, JR., *J.*:

Before us is a petition for review on *certiorari* under Rule 45 urging this Court to set aside the Decision[1] dated March 25,

[1] *Rollo*, pp. 61-75. Penned by Associate Justice Jose C. Reyes, Jr. with Associate Justices Antonio L. Villamor and Ramon A. Cruz concurring.

2011 of the Court of Appeals (CA) in CA-G.R. SP Nos. 108103 and 108168 which affirmed with modification the Decision[2] dated August 1, 2008 of the National Labor Relations Commission (NLRC). The NLRC affirmed the Decision[3] dated August 22, 2006 of the Labor Arbiter in NLRC Sub-RAB V-05-04-00053-05) declaring petitioner liable for illegal dismissal of respondent.

The Facts

Universidad de Sta. Isabel (petitioner) is a non-stock, non-profit religious educational institution in Naga City. Petitioner hired Marvin-Julian L. Sambajon, Jr. (respondent) as a full-time college faculty member with the rank of Assistant Professor on probationary status, as evidenced by an Appointment Contract[4] dated November 1, 2002, effective November 1, 2002 up to March 30, 2003.

After the aforesaid contract expired, petitioner continued to give teaching loads to respondent who remained a full-time faculty member of the Department of Religious Education for the two semesters of school-year (SY) 2003-2004 (June 1, 2003 to March 31, 2004); and two semesters of SY 2004-2005 (June 2004 to March 31, 2005).[5]

Sometime in June 2003, after respondent completed his course in Master of Arts in Education, major in Guidance and Counseling, he submitted the corresponding Special Order from the Commission on Higher Education (CHED), together with his credentials for the said master's degree, to the Human Resources Department of petitioner for the purpose of salary adjustment/increase. Subsequently, respondent's salary was increased, as reflected in his pay slips starting October 1-15, 2004.[6] He was

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[2] *Id*. at 77-89. Penned by Commissioner Angelita A. Gacutan and concurred in by Presiding Commissioner Raul T. Aquino and Commissioner Victoriano R. Calaycay.

[3] *Id*. at 95-102. Penned by Labor Arbiter Jesus Orlando M. Quiñones.

[4] Records, p. 36.

[5] *Id*. at 43.

[6] *Id*. at 38-39.

likewise re-ranked from Assistant Professor to Associate Professor.

In a letter dated October 15, 2004 addressed to the President of petitioner, Sr. Ma. Asuncion G. Evidente, D.C., respondent vigorously argued that his salary increase should be made effective as of June 2003 and demanded the payment of his salary differential. The school administration thru Sr. Purita Gatongay, D.C., replied by explaining its policy on re-ranking of faculty members,[7] *viz*:

x x x x x x x x x

Please be informed that teachers in the Universidad are not re-ranked during their probationary period. The Faculty Manual as revised for school year 2002-2003 provides (page 38) "Re-ranking is done every two years, hence the personnel hold their present rank for two years. Those undergoing probationary period and those on part-time basis of employment are not covered by this provision." This provision is found also in the 2000-2001 Operations Manual.

Your personnel file shows that you were hired as a probationary teacher in the second semester of school year 2002-2003. By October 2004, you will be completing four (4) semesters (two school years) of service. Even permanent teachers are re-ranked only every two years, and you are not even a permanent teacher. I am informed that you have been told several times and made to read the Provision in the Faculty Manual by the personnel office that you cannot be re-ranked because you are still a probationary teacher.

x x x x x x x x x[8]

Respondent insisted on his demand for retroactive pay. In a letter dated January 10, 2005, Sr. Evidente reiterated the school policy on re-ranking of teachers, *viz:*

x x x x x x x x x

Under the Faculty Manual a permanent teacher is not entitled to re-ranking oftener than once every two years. From this it should be

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[7] *Id*. at 40-42.

[8] *Id*. at 42.

obvious that, with all the more reason, a probationary teacher would not be entitled to "evaluation," which could result in re-ranking or "adjustment in salary" oftener than once every two years.

Since you are a probationary teacher, the University is under no obligation to re-rank you or adjust your salary after what you refer to as "evaluation." Nevertheless, considering that in October 2004 you were completing two years of service, the University adjusted your salary in the light of the CHED Special Order you submitted showing that you had obtained the degree of Master of Arts in Education. Instead of being grateful for the adjustment, you insist that the adjustment be made retroactive to June 2003. Simply stated, you want your salary adjusted after one semester of probationary service. We do not think a probationary teacher has better rights than a permanent teacher in the matter of re-ranking or "evaluation."[9]

However, respondent found the above explanation insufficient and not clear enough. In his letter dated January 12, 2005, he pointed out the case of another faculty member — whom he did not name — also on probationary status whose salary was supposedly adjusted by petitioner at the start of school year (June) after he/she had completed his/her master's degree in March. Respondent thus pleaded for the release of his salary differential, or at the very least, that petitioner give him categorical answers to his questions.[10]

Apparently, to resolve the issue, a dialogue was held between respondent and Sr. Evidente. As to the outcome of this conversation, the parties gave conflicting accounts. Respondent claimed that Sr. Evidente told him that the school administration had decided to shorten his probationary period to two years on the basis of his satisfactory performance.[11] This was categorically denied by Sr. Evidente though the latter admitted having informed respondent "that he was made Associate Professor on account of his incessant requests for a salary increase which the Universidad de Santa Isabel eventually accommodated…

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[9] *Id.* at 96.

[10] *Id.* at 97-101.

[11] *Id.* at 59, 45-46.

considering that [respondent] had obtained a Master's Degree in June 2003." She further informed respondent that "his appointment as Associate Professor did not affect his status as a probationary employee" and that petitioner "was not and did not exercise its prerogative to shorten his probationary period to only two years." Sr. Stella O. Real, D.C., who issued a Certificate of Employment to respondent, likewise denied that she confirmed to respondent that petitioner has shortened his probationary employment.[12]

On February 26, 2005, respondent received his letter of termination which stated:

> Greetings of Peace in the Lord!
>
> We regret to inform your good self that your full time probationary appointment will not be renewed when it expires at the end of this coming March 31, 2005.
>
> Thank you so much for the services that you have rendered to USI and to her clientele the past several semesters. We strongly and sincerely encourage you to pursue your desire to complete your Post Graduate studies in the University of your choice as soon as you are able.
>
> God bless you in all your future endeavors.
>
> Godspeed![13]

On April 14, 2005, respondent filed a complaint for illegal dismissal against the petitioner.

In his Decision dated August 22, 2006, Labor Arbiter Jesus Orlando M. Quinones ruled that there was no just or authorized cause in the termination of respondent's probationary employment. Consequently, petitioner was found liable for illegal dismissal, thus:

> WHEREFORE, in view of the foregoing, judgment is hereby rendered finding respondent school UNIVERSIDAD DE SANTA

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[12] *Id*. at 43, 111-112.

[13] *Id*. at 57.

ISABEL liable for the illegal dismissal of complainant MARVIN-JULIAN L. SAMBAJON, JR.

Accordingly, and consistent with Article 279 of the Labor Code, respondent school is hereby directed to pay complainant full backwages covering the period/duration of the 1st semester of academic year 2005-2006. Reinstatement being rendered moot by the expiration of the probationary period, respondent school is directed to pay complainant separation pay in lieu of reinstatement computed at one (1) month's pay for every year of service. An award of 10% attorney's fees in favor of complainant is also held in order.

(please see attached computation of monetary award as integral part of this decision).

All other claims and charges are DISMISSED for lack of legal and factual basis.

SO ORDERED.[14]

Petitioner appealed to the NLRC raising the issue of the correct interpretation of Section 92 of the Manual of Regulations for Private Schools and DOLE-DECS-CHED-TESDA Order No. 01, series of 1996, and alleging grave abuse of discretion committed by the Labor Arbiter in ruling on a cause of action/ issue not raised by the complainant (respondent) in his position paper.

On August 1, 2008, the NLRC rendered its Decision affirming the Labor Arbiter and holding that respondent had acquired a permanent status pursuant to Sections 91, 92 and 93 of the 1992 Manual of Regulations for Private Schools, in relation to Article 281 of the Labor Code, as amended. Thus:

In the instant case, the first contract (records, pp. 36; 92) executed by the parties provides that he was hired on a probationary status effective November 1, 2002 to March 30, 2003. While his employment continued beyond the above-mentioned period and lasted for a total of five (5) consecutive semesters, it appears that the only other contract he signed is the one (records, p. 103) for the second semester of SY 2003-2004. A portion of this contract reads:

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[14] *Rollo,* pp. 101-103.

> *"I am pleased to inform you that you are designated and commissioned to be an Apostle of Love and Service, Unity and Peace as you dedicate and commit yourself in the exercise of your duties and responsibilities as a:*
>
> *FULL-TIME FACULTY MEMBER*
>
> *of the Religious Education Department from November 1, 2003 to March 31, 2004.*
>
> *Unless otherwise renewed in writing this designation automatically terminates as of the date expiration above stated without further notice."*

There is no showing that the complainant signed a contract for the first and second semesters of SY 2004-2005.

Under the circumstances, it must be concluded that the complainant has acquired permanent status. The last paragraph of Article 281 of the Labor Code provides that "an employee who is allowed to work after a probationary period shall be considered a regular employee." Based thereon, the complainant required *[sic]* permanent status on the first day of the first semester of SY 2003-2004.

As presently worded, Section 92 of the revised Manual of Regulations for Private Schools merely provides for the maximum lengths of the probationary periods of academic personnel of private schools in the three (3) levels of education (elementary, secondary, tertiary). The periods provided therein are not requirements for the acquisition, by them, of permanent status.

WHEREFORE, the decision appealed from is hereby **AFFIRMED**.

SO ORDERED.[15]

Petitioner and respondent sought reconsideration of the above decision, with the former contending that the NLRC resolved an issue not raised in the appeal memorandum, while the latter asserted that the NLRC erred in not awarding him full back wages so as to conform to the finding that he had acquired a permanent status. Both motions were denied by the NLRC which ruled that regardless of whether or not the parties were aware of the rules for the acquisition of permanent status by private

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[15] *Id*. at 86-88.

school teachers, these rules applied to them and overrode their mistaken beliefs. As to respondent's plea for back wages, the NLRC said the award of back wages was not done in this case because respondent did not appeal the Labor Arbiter's decision.

Both parties filed separate appeals before the CA. On motion by respondent, the two cases were consolidated (CA-G.R. SP Nos. 108103 and 108168).[16]

By Decision dated March 25, 2011, the CA sustained the conclusion of the NLRC that respondent had already acquired permanent status when he was allowed to continue teaching after the expiration of his first appointment-contract on March 30, 2003. However, the CA found it necessary to modify the decision of the NLRC to include the award of back wages to respondent. The dispositive portion of the said decision reads:

> **WHEREFORE**, premises considered, the petition docketed as CA-G.R. SP No. 108103 is **GRANTED**. The challenged Decision of the NLRC dated August 1, 2008 in NLRC NCR CA No. 050481-06 (NLRC Sub-RAB V-05-04-00053-05) is **AFFIRMED with MODIFICATION** in that Universidad de Sta. Isabel is directed to reinstate Marvin-Julian L. Sambajon, Jr. to his former position without loss of seniority rights and to pay him full backwages computed from the time his compensation was withheld from him up to the time of his actual reinstatement. All other aspects are **AFFIRMED**.
>
> As regards CA-G.R. SP No. 108168, the petition is **DENIED** for lack of merit.
>
> **SO ORDERED**.[17]

The Petition/Issues

Before this Court, petitioner ascribes grave error on the part of the CA in sustaining the NLRC which ruled that respondent was dismissed without just or authorized cause at the time he had already acquired permanent or regular status since petitioner allowed him to continue teaching despite the expiration of the

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[16] *Id.* at 516-517.

[17] *Id.* at 74.

first contract of probationary employment for the second semester of SY 2002-2003. Petitioner at the outset underscores the fact that the NLRC decided an issue which was not raised on appeal, *i.e.*, whether respondent had attained regular status. It points out that the Labor Arbiter's finding that respondent was dismissed while still a probationary employee was not appealed by him, and hence such finding had already become final.

In fine, petitioner asks this Court to rule on the following issues: (1) whether the NLRC correctly resolved an issue not raised in petitioner's appeal memorandum; and (2) whether respondent's probationary employment was validly terminated by petitioner.

Our Ruling

The petition is partly meritorious.

Issues on Appeal before the NLRC

Section 4(d), Rule VI of the 2005 Revised Rules of Procedure of the NLRC, which was in force at the time petitioner appealed the Labor Arbiter's decision, expressly provided that, on appeal, the NLRC shall limit itself only to the specific issues that were elevated for review, to wit:

> **Section 4. Requisites for perfection of appeal**. x x x.
>
> x x x x x x x x x
>
> (d) Subject to the provisions of Article 218 of the Labor Code, once the appeal is perfected in accordance with these Rules, the Commission shall limit itself to reviewing and deciding only the specific issues that were elevated on appeal.

We have clarified that the clear import of the aforementioned procedural rule is that the NLRC shall, in cases of perfected appeals, limit itself to reviewing those issues which are raised on appeal. As a consequence thereof, any other issues which were not included in the appeal shall become final and executory.[18]

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[18] *Luna v. Allado Construction Co., Inc.*, G.R. No. 175251, May 30, 2011, 649 SCRA 262, 268.

In this case, petitioner sets forth the following issues in its appeal memorandum:

5.01

WHETHER THE MARVIN JULIAN L. SAMBAJON, JR. WAS ILLEGALLY DISMISSED FROM THE UNIVERSIDAD DE STA. ISABEL.

5.02

WHETHER THE UNIVERSIDAD DE STA. ISABEL SHORTENED THE PROBATIONARY PERIOD OF MARVIN JULIAN L. SAMBAJON.

5.03

WHETHER RESPONDENTS-APPELLANTS ARE ENTITLED TO DAMAGES.[19]

Specifically, petitioner sought the correct interpretation of the Manual of Regulations for Private School Teachers and DOLE-DECS-CHED-TESDA Order No. 01, series of 1996, insofar as the probationary period for teachers.

In reviewing the Labor Arbiter's finding of illegal dismissal, the NLRC concluded that respondent had already attained regular status after the expiration of his first appointment contract as probationary employee. Such conclusion was but a logical result of the NLRC's own interpretation of the law. Since petitioner elevated the questions of the validity of respondent's dismissal and the applicable probationary period under the aforesaid regulations, the NLRC did not gravely abuse its discretion in fully resolving the said issues.

As the Court held in *Roche (Phils.) v. NLRC:*[20]

Petitioners then suggest that the respondent Commission abused its discretion in awarding reliefs in excess of those stated in the decision of the labor arbiter despite the absence of an appeal by Villareal. To stress this point, they cited Section 5(c) of the Rules

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[19] Records, p. 154.

[20] 258-A Phil. 160, 171-172 (1989).

of Procedure of the National Labor Relations Commission which provides that the Commission shall, in cases of perfected appeals, limits itself to reviewing those issues which were raised on appeal. Consequently, those which were not raised on appeal shall be final and executory.

There is no merit to this contention. The records show that the petitioners elevated the issues regarding the correctness of the award of damages, reinstatement with backpay, retirement benefits and the cost-saving bonus to the respondent Commission in their appeal. **This opened the said issues for review and any action taken thereon by the Commission was well within the parameters of its jurisdiction**. (Emphasis supplied.)

Probationary Employment Period

A probationary employee is one who is on trial by the employer during which the employer determines whether or not said employee is qualified for permanent employment. A probationary appointment is made to afford the employer an opportunity to observe the fitness of a probationary employee while at work, and to ascertain whether he will become a proper and efficient employee. The word probationary as used to describe the period of employment implies the purpose of the term or period, but not its length.[21]

It is well settled that the employer has the right or is at liberty to choose who will be hired and who will be denied employment. In that sense, it is within the exercise of the right to select his employees that the employer may set or fix a probationary period within which the latter may test and observe the conduct of the former before hiring him permanently.[22] The law, however, regulates the exercise of this prerogative to fix the period of probationary employment. While there is no statutory cap on the minimum term of probation, the law sets a maximum "trial period" during which the employer may test the fitness and efficiency of the employee.[23]

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[21] *International Catholic Migration Commission v. National Labor Relations Commission,* 251 Phil. 560, 567 (1989).

[22] *Id.* at 567-568.

[23] *Magis Young Achievers' Learning Center v. Manalo,* G.R. No. 178835, February 13, 2009, 579 SCRA 421, 432.

Article 281 of the Labor Code provides:

ART. 281. Probationary Employment.– Probationary employment shall not exceed six (6) months from the date the employee started working, unless it is covered by an apprenticeship agreement stipulating a longer period. The services of an employee who has been engaged on a probationary basis may be terminated for a just cause or when he fails to qualify as a regular employee in accordance with reasonable standards made known by the employer to the employee at the time of his engagement. An employee who is allowed to work after a probationary period shall be considered a regular employee.

The probationary employment of teachers in private schools is not governed purely by the Labor Code. The Labor Code is *supplemented* with respect to the period of probation by special rules found in the Manual of Regulations for Private Schools.[24] On the matter of *probationary period*, Section 92 of the 1992 Manual of Regulations for Private Schools regulations states:

Section 92. *Probationary Period.* – Subject in all instances to compliance with the Department and school requirements, **the probationary period for academic personnel shall not be more than** three (3) consecutive years of satisfactory service for those in the elementary and secondary levels, **six (6) consecutive regular semesters of satisfactory service for those in the tertiary level**, and nine (9) consecutive trimesters of satisfactory service for those in the tertiary level where collegiate courses are offered on a trimester basis. **(**Emphasis supplied.)

Thus, it is the Manual of Regulations for Private Schools, and not the Labor Code, that determines whether or not a faculty member in an educational institution has attained regular or permanent status.[25] Section 93[26] of the 1992 Manual of

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[24] The 1992 Manual of Regulations is the applicable Manual as it embodied the pertinent rules at the time of the parties' dispute, but a new Manual has been in place since July 2008; see *Magis Young Achievers' Learning Center v. Manalo*, *id.* at 431-438.

[25] *Lacuesta v. Ateneo de Manila University*, 513 Phil. 329, 335 (2005).

[26] Section 93. *Regular or Permanent Status.* Those who have served the probationary period shall be made regular or permanent. Full-time

Regulations for Private Schools provides that full-time teachers who have satisfactorily completed their probationary period shall be considered regular or permanent.

In this case, the CA sustained the NLRC's ruling that respondent was illegally dismissed considering that he had become a regular employee when petitioner allowed him to work beyond the date specified in his first probationary appointment contract which expired on March 30, 2003. According to the CA:

> … As can be gleaned from Section 92 of the 1992 Manual of Regulations for Private Schools, the probationary period applicable in this case is not more than six (6) consecutive regular semesters of satisfactory service. In other words, the probationary period for academic personnel in the tertiary level runs from one (1) semester to six (6) consecutive regular semesters of satisfactory service. In the instant case, records reveal that Sambajon, Jr. only signed two appointment contracts. The first appointment-contract which he signed was dated November 2002 for the period November 1, 2002 to March 30, 2003, as Assistant Professor 10 on probationary status. x x x The second appointment-contract which Sambajon, Jr. executed was dated February 26, 2004, for the period November 1, 2003 to March 31, 2004. x x x Compared with the first appointment-contract, it was not indicated in the February 26, 2004 appointment-contract that Sambajon, Jr. was hired on probationary status, which explains the NLRC's conclusion that Sambajon, Jr. already attained permanent status. At this juncture, it is worthy to emphasize that other than the period provided under Article 281 of the Labor Code, the following quoted portion of Article 281 of the Labor Code still applies:
>
> > "ART. 281. PROBATIONARY EMPLOYMENT. – x x x An employee who is allowed to work after a probationary period shall be considered a regular employee."

Thus, We sustain the NLRC's conclusion that Sambajon, Jr. acquired permanent status on the first day of the first semester of SY 2003-2004 when he was allowed to continue with his teaching stint after the expiration of his first appointment-contract on March 30, 2003.[27]

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teachers who have satisfactorily completed their probationary period shall be considered regular or permanent.

[27] *Rollo,* pp. 71-72.

On record are five appointment contracts[28] of respondent:

Date	Contract Period
November 1, 2002	November 1, 2002-March 30, 2003
September 28, 2003	June 1, 2003-October 31, 2003
February 26, 2004	November 1, 2003-March 31, 2004
September 30, 2004	June 1, 2004-October 31, 2004
October 28, 2004	November 3, 2004-March 31, 2005

Only the first and third contracts were signed by the respondent. However, such lack of signature in the second contract appears not to be the crucial element considered by the CA but the fact that the third contract dated February 26, 2004, unlike the previous contracts, does not indicate the nature of the appointment as probationary employment. According to the CA, this implies, as concluded by the NLRC, that respondent was already a regular employee.

We disagree.

The third appointment contract dated February 26, 2004 reads:

February 26, 2004

MR. MARVIN JULIAN SAMBAJON
Religious Education Department

Dear Mr. Sambajon,

I am pleased to inform you that you are designated and commissioned to be an Apostle of Love and Service, Unity and Peace as you dedicate and commit yourself in the exercise of your duties and responsibilities as a:

FULL TIME FACULTY MEMBER

of the *Religious Education Department* from *November 1, 2003 to March 31, 2004*.

Unless otherwise renewed in writing, this designation automatically terminates as of the date expiration above states without further notice.

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[28] Records, pp. 36, 103-105, 112.

As a member of the academic/clinical community, you are expected to live by and give your full support to the promotion and attainment of the Vision-Mission, goals and objectives, the rules and regulations, the Core Values which the University professes to believe and live by.

Congratulations and keep your work full in the spirit of the Lord for the Charity of Christ urges us to live life to the fullest.

God bless

In Christ,

Sr. Ma. Asuncion G. Evidente, D.C.
USI President

Witness:

Sr. Stella O. Real, D.C.
HR Officer

I, _____ **understand that unless renewed in writing, my services** as _____ **expires automatically on the specific date above stated.**

Furthermore, I fully accept this appointment to help build the Kingdom of God here and now and to facilitate the living of the Core Values and the attainment of the Vision-Mission and the goals and objectives of the University.

Received and Conforme:

(SGD.) MARVIN-JULIAN L. SAMBAJON, JR.[29]

Since it was explicitly provided in the above contract that unless renewed in writing respondent's appointment automatically expires at the end of the stipulated period of employment, the CA erred in concluding that simply because the word "probationary" no longer appears below the designation (Full-Time Faculty Member), respondent had already become a permanent employee. Noteworthy is respondent's admission of being still under probationary period in his January 12, 2005 letter to Sr. Evidente reiterating his demand for salary differential,

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[29] *Id*. at 103.

which letter was sent almost one year *after* he signed the February 26, 2004 appointment contract, to wit:

> **The problem is that your good office has never categorically resolved whether or not probationary teachers can also be evaluated for salary adjustment.** Nevertheless, inferring from your statement that evaluation precedes re-ranking and in fact is the basis for re-ranking, may I categorically ask: does it really mean that since, it precedes re-ranking, evaluation should not take place among probationary teachers for they can not yet be re-ranked? If so, then **how pitiful are we, probationary teachers** for our credentials are never evaluated since we cannot yet be re-ranked. Oh my goodness! Can your good office not give me a clearer and more convincing argument shedding light on this matter?[30]

Respondent nonetheless claims that subsequently, the probationary period of three years under the regulations was shortened by petitioner as relayed to him by Sr. Evidente herself. However, the latter, together with Sr. Real, categorically denied having informed respondent that his probationary period was abbreviated, allegedly the reason his salary adjustment was not made retroactive. Apart from his bare assertion, respondent has not adduced proof of any decision of the school administration to shorten his probationary period.

In *Rev. Fr. Labajo v. Alejandro*,[31] we held that:

> The three (3)-year period of service mentioned in paragraph 75 [of the Manual of Regulations for Private Schools] is of course the *maximum* period or upper limit, so to speak, of probationary employment allowed in the case of private school teachers. This necessarily implies that a regular or permanent employment status may, under certain conditions, be attained in less than three (3) years. By and large, however, **whether or not one has indeed attained permanent status in one's employment, before the passage of three (3) years, is a matter of proof.** (Emphasis supplied.)

There can be no dispute that the period of probation may be reduced if the employer, convinced of the fitness and efficiency

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[30] *Id*. at 97-98.

[31] 248 Phil. 194, 200 (1988).

of a probationary employee, voluntarily extends a permanent appointment even before the three-year period ends. Conversely, if the purpose sought by the employer is neither attained nor attainable within the said period, the law does not preclude the employer from terminating the probationary employment on justifiable ground; or, a shorter probationary period may be incorporated in a collective bargaining agreement. But absent any circumstances which unmistakably show that an abbreviated probationary period has been agreed upon, the three-year probationary term governs.[32]

As to the Certificate of Employment[33] issued by Sr. Real on January 31, 2005, it simply stated that respondent "was a full time faculty member in the Religious Education Department of this same institution" and that he holds the rank of Associate Professor. There was no description or qualification of respondent's employment as regular or permanent. Neither did the similar Certification[34] also issued by Sr. Real on March 18, 2005 prove respondent's status as a permanent faculty member of petitioner.

It bears stressing that full-time teaching primarily refers to the extent of services rendered by the teacher to the employer school and not to the nature of his appointment. Its significance lies in the rule that only full-time teaching personnel can acquire regular or permanent status. The provisions of DOLE-DECS-CHED-TESDA Order No. 01, series of 1996, "*Guidelines on Status of Employment of Teachers and of Academic Personnel in Private Educational Institutions*" are herein reproduced:

2. Subject in all instances to compliance with the concerned agency and school requirements, the probationary period for teaching or academic personnel shall not be more than three (3) consecutive school years of satisfactory service for those in the elementary and

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[32] *Magis Young Achievers' Learning Center v. Manalo, supra* note 23, at 436-437, citing *Lacuesta v. Ateneo de Manila University, supra* note 25, and *Escorpizo v. University of Baguio,* 366 Phil. 166, 180 (1999).

[33] Records, p. 43.

[34] *Id*. at 44.

secondary levels; six (6) consecutive regular semesters of satisfactory service for those in the tertiary and graduate levels, and nine (9) consecutive trimesters of satisfactory service for those in the tertiary level where collegiate courses are offered on a trimester basis.

Unless otherwise provided by contract, school academic personnel who are under probationary employment cannot be dismissed during the applicable probationary period, unless dismissal is compelled by a just cause or causes.

3. Teachers or academic personnel who have served the probationary period as provided for in the immediately preceding paragraph shall be made regular or permanent if allowed to work after such probationary period. The educational institution, however, may shorten the probationary period after taking into account the qualifications and performance of the probationary teachers and academic personnel.

Full-time teaching or academic personnel are those meeting all the following requirements:

3.1. Who possess at least the minimum academic qualifications prescribed by the Department of Education, Culture and Sports for Basic Education, the Commission on Higher Education for Tertiary Education, and the Technical Education and Skills Development Authority for Technical and Vocational Education under their respective Manual of Regulations governing said personnel;

3.2 Who are paid monthly or hourly, based on the normal or regular teaching loads as provided for in the policies, rules and standards of the agency concerned;

3.3 Whose regular working day of not more than eight (8) hours a day is devoted to the school;

3.4 Who have no other remunerative occupation elsewhere requiring regular hours of work that will conflict with the working hours in the school; and

3.5 Who are not teaching full-time in any other educational institution

All teaching or academic personnel who do not meet the foregoing qualifications are considered part time.

4. Part-time teaching or academic personnel cannot acquire regular or permanent employment status.

5. Teaching or academic personnel who do not meet the minimum academic qualifications shall not acquire tenure or regular status. The school may terminate their services when a qualified teacher becomes available.[35]

In this case, petitioner applied the maximum three-year probationary period – equivalent to six consecutive semesters – provided in the Manual of Regulations. This can be gleaned from the letter dated March 24, 2004 of Sr. Grace Namocancat, D.C. addressed to respondent, informing the latter of the result of evaluation of his performance for SY 2003-2004 and stating that November 2004 marks his second year of full-time teaching, which means he had one more year to become a permanent employee.[36]

The circumstance that respondent's services were hired on semester basis did not negate the applicable probationary period, which is three school years or six consecutive semesters. In *Magis Young Achievers' Learning Center*[37] the Court explained the three years probationary period rule in this wise:

The common practice is for the employer and the teacher to enter into a contract, effective for one school year. At the end of the school year, the employer has the option not to renew the contract, particularly considering the teacher's performance. If the contract is not renewed, the employment relationship terminates. If the contract is renewed, usually for another school year, the probationary employment continues. Again, at the end of that period, the parties may opt to renew or not to renew the contract. If renewed, this second renewal of the contract for another school year would then be the last year – since it would be the third school year – of probationary employment. At the end of this third year, the employer may now decide whether to extend a permanent appointment to the employee, primarily on the basis of the employee having met the

[35] *Rollo*, pp. 418-419.

[36] *Id*. at 82; records, p. 94.

[37] *Supra* note 23.

reasonable standards of competence and efficiency set by the employer. **For the entire duration of this three-year period, the teacher remains under probation**. Upon the expiration of his contract of employment, being simply on probation, he cannot automatically claim security of tenure and compel the employer to renew his employment contract. It is when the yearly contract is renewed for the third time that Section 93 of the Manual becomes operative, and the teacher then is entitled to regular or permanent employment status.[38] (Emphasis supplied.)

Petitioner argues that respondent's probationary period expires after each semester he was contracted to teach and hence it was not obligated to renew his services at the end of the fifth semester (March 2005) of his probationary employment. It asserts that the practice of issuing appointment contracts for every semester was legal and therefore respondent was not terminated when petitioner did not renew his contract for another semester as his probationary contract merely expired. Plainly, petitioner considered the subject appointment contracts as fixed-term contracts such that it can validly dismiss respondent at the end of each semester for the reason that his contract had expired.

The Court finds no merit in petitioner's interpretation of the Manual of Regulations, supplemented by DOLE-DECS-CHED-TESDA Order No. 01, series of 1996. As we made clear in the afore-cited case of *Magis Young Achievers' Learning Center*, the teacher remains under probation for the entire duration of the three-year period. Subsequently, in the case of *Mercado v. AMA Computer College-Parañaque City, Inc.*[39] the Court, speaking through Justice Arturo D. Brion, recognized the right of respondent school to determine for itself that it shall use fixed-term employment contracts as its medium for hiring its teachers. Nevertheless, the Court held that the teachers' probationary status should not be disregarded simply because their contracts were fixed-term. Thus:

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[38] *Id.* at 435-436.

[39] G.R. No. 183572, April 13, 2010, 618 SCRA 218.

The Conflict: Probationary Status and Fixed-term Employment

The existence of the term-to-term contracts covering the petitioners' employment is not disputed, nor is it disputed that they were on probationary status – *not permanent or regular status* – from the time they were employed on May 25, 1998 and until the expiration of their Teaching Contracts on September 7, 2000. As the CA correctly found, their teaching stints only covered a period of at least seven (7) consecutive trimesters or two (2) years and three (3) months of service. ***This case, however, brings to the fore the essential question of which, between the two factors affecting employment, should prevail given AMACC's position that the teachers contracts expired and it had the right not to renew them***. In other words, should the teachers' probationary status be disregarded simply because the contracts were fixed-term?

The provision on employment on probationary status under the Labor Code is a primary example of the fine balancing of interests between labor and management that the Code has institutionalized pursuant to the underlying intent of the Constitution.

On the one hand, employment on probationary status affords management the chance to fully scrutinize the true worth of hired personnel before the full force of the security of tenure guarantee of the Constitution comes into play. Based on the standards set at the start of the probationary period, management is given the widest opportunity during the probationary period to reject hirees who fail to meet *its own adopted but reasonable standards*. These standards, together with *the just and authorized causes for termination of employment the Labor Code expressly provides*, are the grounds available to terminate the employment of a teacher on probationary status. For example, the school may impose reasonably stricter attendance or report compliance records on teachers on probation, and reject a probationary teacher for failing in this regard, although the same attendance or compliance record may not be required for a teacher already on permanent status. At the same time, the same just and authorize[d] causes for dismissal under the Labor Code apply to probationary teachers, so that they may be the first to be laid-off if the school does not have enough students for a given semester or trimester. Termination of employment on this basis is an authorized cause under the Labor Code.

Labor, for its part, is given the protection during the probationary period of knowing the company standards the new hires have to meet during the probationary period, *and to be judged on the basis of these standards*, aside from the usual standards applicable to employees after they achieve permanent status. Under the terms of the Labor Code, these standards should be made known to the teachers on probationary status at the start of their probationary period, or at the very least under the circumstances of the present case, at the start of the semester or the trimester during which the probationary standards are to be applied. *Of critical importance in invoking a failure to meet the probationary standards, is that the school should show – **as a matter of due process** – how these standards have been applied*. This is effectively the second notice in a dismissal situation that the law requires as a due process guarantee supporting the security of tenure provision, and is in furtherance, too, of the basic rule in employee dismissal that the employer carries the burden of justifying a dismissal. These rules ensure compliance with the limited security of tenure guarantee the law extends to probationary employees.

When fixed-term employment is brought into play under the above probationary period rules, the situation – as in the present case – may at first blush look muddled as fixed-term employment is in itself a valid employment mode under Philippine law and jurisprudence. The conflict, however, is more apparent than real when the respective nature of fixed-term employment and of employment on probationary status are closely examined.

The fixed-term character of employment essentially refers ***to the period*** agreed upon between the employer and the employee; employment exists only for the duration of the term and ends on its own when the term expires. In a sense, employment on probationary status also refers to a period because of the technical meaning "*probation*" carries in Philippine labor law – a maximum period of six months, or in the academe, a period of three years for those engaged in teaching jobs. Their similarity ends there, however, because of the overriding meaning that being "*on probation*" connotes, *i.e.*, a process of testing and observing the character or abilities of a person who is new to a role or job.

Understood in the above sense, the *essentially protective character of probationary status for management* can readily be appreciated. But this same protective character gives rise to the countervailing

but equally protective rule that the probationary period can only last for a specific maximum period and under reasonable, well-laid and properly communicated standards. Otherwise stated, **within the period of the probation, any employer move *based on the probationary standards* and affecting the continuity of the employment must strictly conform to the probationary rules.**

Under the given facts where the school year is divided into trimesters, the school apparently utilizes its fixed-term contracts as a convenient arrangement dictated by the trimestral system and not because the workplace parties really intended to limit the period of their relationship to any fixed term and to finish this relationship at the end of that term. If we pierce the veil, so to speak, of the parties' so-called fixed-term employment contracts, what undeniably comes out at the core is a **fixed-term contract conveniently used by the school to define and regulate its relations with its teachers *during their probationary period*.**

To be sure, nothing is illegitimate in defining the school-teacher relationship in this manner. The school, however, cannot forget that its system of fixed-term contract is a system that operates during the probationary period and for this reason is subject to the terms of Article 281 of the Labor Code. ***Unless this reconciliation is made, the requirements of this Article on probationary status would be fully negated as the school may freely choose not to renew contracts simply because their terms have expired. The inevitable effect of course is to wreck the scheme that the Constitution and the Labor Code established to balance relationships between labor and management.***

Given the clear constitutional and statutory intents, we cannot but conclude that in a situation where the probationary status overlaps with a fixed-term contract *not specifically used for the fixed term it offers*, Article 281 should assume primacy and the fixed-period character of the contract must give way. This conclusion is immeasurably strengthened by the petitioners' and the AMACC's hardly concealed expectation that the employment on probation could lead to permanent status, and that the contracts are renewable unless the petitioners fail to pass the school's standards.[40] (Additional emphasis supplied.)

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[40] *Id*. at 237-243.

Illegal Dismissal

Notwithstanding the limited engagement of probationary employees, they are entitled to constitutional protection of security of tenure during and before the end of the probationary period.[41] The services of an employee who has been engaged on probationary basis may be terminated for any of the following: (a) a just or (b) an authorized cause; and (c) when he fails to qualify as a regular employee in accordance with reasonable standards prescribed by the employer.[42]

Thus, while no vested right to a permanent appointment had as yet accrued in favor of respondent since he had not completed the prerequisite three-year period (six consecutive semesters) necessary for the acquisition of permanent status as required by the Manual of Regulations for Private Schools[43] — which has the force of law[44] — he enjoys a limited tenure. During the said probationary period, he cannot be terminated except for just or authorized causes, or if he fails to qualify in accordance with reasonable standards prescribed by petitioner for the acquisition of permanent status of its teaching personnel.

In a letter dated February 26, 2005, petitioner terminated the services of respondent stating that his probationary employment as teacher will no longer be renewed upon its expiry on March 31, 2005, respondent's fifth semester of teaching. No just or authorized cause was given by petitioner. Prior to this, respondent had consistently achieved above average rating

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[41] See *Manila Hotel Corporation v. NLRC,* 225 Phil. 127, 133-134 (1986), citing *Biboso v. Victorias Milling Co., Inc.,* 166 Phil. 717, 722-723 (1977).

[42] *Abbott Laboratories Philippines v. Alcaraz,* G.R. No. 192571, July 23, 2013, pp. 11-12, citing *Robinsons Galleria/Robinsons Supermarket Corporation v. Ranchez,* G.R. No. 177937, January 19, 2011, 640 SCRA 135, 142.

[43] See *Fr. Escudero, O.P. v. Office of the President of the Phils.,* 254 Phil. 789, 797 (1989); *Colegio San Agustin v. NLRC,* 278 Phil. 414, 419 (1991).

[44] See *Espiritu Santo Parochial School v. National Labor Relations Commission,* 258 Phil. 600, 606 (1989).

based on evaluation by petitioner's officials and students. He had also been promoted to the rank of Associate Professor after finishing his master's degree course on his third semester of teaching. Clearly, respondent's termination after five semesters of satisfactory service was illegal.

Respondent therefore is entitled to continue his three-year probationary period, such that from March 31, 2005, his probationary employment is deemed renewed for the following semester (1st semester of SY 2005-2006). However, given the discordant relations that had arisen from the parties' dispute, it can be inferred with certainty that petitioner had opted not to retain respondent in its employ beyond the three-year period.

On the appropriate relief and damages, we adhere to our disposition in *Magis Young Achievers' Learning Center*:[45]

> Finally, we rule on the propriety of the monetary awards. Petitioner, as employer, is entitled to decide whether to extend respondent a permanent status by renewing her contract beyond the three-year period. Given the acrimony between the parties which must have been generated by this controversy, it can be said unequivocally that petitioner had opted not to extend respondent's employment beyond this period. Therefore, the award of backwages as a consequence of the finding of illegal dismissal in favor of respondent should be confined to the three-year probationary period. Computing her monthly salary of ₱15,000.00 for the next two school years (₱15,000.00 x 10 months x 2), respondent already having received her full salaries for the year 2002-2003, she is entitled to a total amount of ₱300,000.00. Moreover, respondent is also entitled to receive her 13th month pay correspondent to the said two school years, computed as yearly salary, divided by 12 months in a year, multiplied by 2, corresponding to the school years 2003-2004 and 2004-2005, or ₱150,000.00 / 12 months x 2 = ₱25,000.00. Thus, the NLRC was correct in awarding respondent the amount of ₱325,000.00 as backwages, inclusive of 13th month pay for the school years 2003-2004 and 2004-2005, and the amount of ₱3,750.00 as pro-rated 13th month pay.

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[45] *Supra* note 23, at 443-444.

WHEREFORE, the petition for review on *certiorari* is **PARTLY GRANTED.** The Decision dated March 25, 2011 of the Court of Appeals in CA-G.R. SP Nos. 108103 & 108168 is hereby **MODIFIED.** Petitioner Universidad de Sta. Isabel is hereby **DIRECTED to PAY** respondent Marvin-Julian L. Sambajon, Jr. back wages corresponding to his full monthly salaries for one semester (1st semester of SY 2005-2006) and pro-rated 13th month pay.

The case is **REMANDED** to the Labor Arbiter for a recomputation of the amounts due to respondent in conformity with this Decision.

No pronouncement as to costs.

SO ORDERED.

Sereno, C.J. (Chairperson), Leonardo-de Castro, Bersamin, and *Reyes, JJ.,* concur.

SECOND DIVISION

[G.R. No. 196970. April 2, 2014]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **RENE SANTIAGO,** *accused-appellant.*

SYLLABUS

CRIMINAL LAW; SIMPLE RAPE; COMMITTED WHEN THE VICTIM IS AGE TWELVE (12) YEARS AND ABOVE; PENALTY.— "The elements of [statutory rape] are: (1) that the accused had carnal knowledge of a woman; and (2) that the woman is below 12 years of age x x x." In this case, although the Informations alleged that "AAA" was 11 years of age when the rape incidents transpired, she was actually 13 years of age

when the rape incidents transpired on December 25, 2004 and January 21, 2005, as her Certificate of Birth showed that she was born on March 10, 1991. Thus, appellant is guilty only of simple, not statutory rape for which he was properly imposed the sentence of *reclusion perpetua* pursuant to Article 266-B of the Revised Penal Code. However, it must be mentioned that appellant is not eligible for parole pursuant to Section 3 of Republic Act No. 9346. The awards of ₱50,000.00 as moral damages and ₱50,000.00 as civil indemnity are likewise proper. However, the award of exemplary damages must be increased to ₱30,000.00 in line with prevailing jurisprudence. Also, interest at the rate of 6% *per annum* shall be imposed from date of finality of this judgment until fully paid.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

R E S O L U T I O N

DEL CASTILLO, *J.*:

Appellant Rene Santiago was charged with two counts of rape. The Informations[1] read as follows:

Criminal Case No. 3541:

That on December 25, 2004 at around 12:30 in the morning in Brgy. Pingit, Municipality of Baler, Province of Aurora and within the jurisdiction of this Honorable Court, the said accused, did then and there willfully, unlawfully and feloniously, by means of threats and intimidation, [have] carnal knowledge of "AAA",[2] who was

[1] Records, pp. 1-2.

[2] "The real names of the victim and of the members of her immediate family are withheld pursuant to Republic Act No. 7610 (Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act) and Republic Act No. 9262 (Anti-Violence Against Women and Their Children Act of 2004.)" *People v. Teodoro*, G.R. No. 175876, February 20, 2013, 691 SCRA 324, 326.

then an eleven[-]year old girl, by inserting his penis into her vagina against her will and consent and effectively prejudicing her development as a child.

CONTRARY TO LAW.

Criminal Case No. 3542:

That on January 21, 2005 in Brgy. Zabali, Municipality of Baler, Province of Aurora and within the jurisdiction of this Honorable Court, the said accused, did then and there willfully, unlawfully and feloniously, by means of threats and intimidation, [have] carnal knowledge of "AAA", who was then an eleven[-]year old girl, by inserting his penis into her vagina against her will and consent and effectively prejudicing her development as a child.

CONTRARY TO LAW.

When arraigned on March 24, 2006, appellant entered a plea of not guilty.[3] Appellant's defense of denial and alibi was not given any credence by the trial court for being self-serving and unsubstantiated and considering his positive identification by "AAA". Consequently, on June 7, 2007, the Regional Trial Court of Baler, Aurora, Branch 96, rendered a Joint Decision[4] convicting appellant of two counts of simple rape, *viz*:

WHEREFORE, premises considered, the Court finds accused Rene Santiago GUILTY beyond reasonable doubt of two counts of the crime of RAPE, defined under Article 266-A(1)(a) and penalized under Article 266-B of the Revised Penal Code, and hereby sentences him to suffer the penalty of *reclusion perpetua* for each of the two cases and to pay the victim "AAA", for said two counts of rape, the amount of One Hundred Thousand Pesos (Php100,000.00) as civil indemnity, the amount of One Hundred Thousand Pesos (Php100,000.00) as moral damages, and Fifty Thousand Pesos (Php50,000.00) as exemplary damages.

SO ORDERED.[5]

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[3] Records, p. 18.

[4] *Id*. at 169-182; penned by Judge Corazon D. Soluren.

[5] *Id*. at 182.

Aggrieved, appellant appealed to the Court of Appeals.[6] In its Decision[7] of October 21, 2010, the appellate court affirmed *in toto* the trial court's ruling, *viz*:

> WHEREFORE, premises considered, the appealed decision is wholly AFFIRMED.
>
> SO ORDERED.[8]

Hence, this appeal.[9]

In a Resolution[10] dated July 13, 2011, we required both parties to file their Supplemental Briefs. However, they opted to adopt the briefs they filed before the Court of Appeals as their Supplemental Briefs.[11]

Appellant argues that "AAA" did not resist his sexual advances;[12] neither were they against her will.[13] Interestingly, by arguing in this manner, appellant changed the theory of his defense, *i.e.*, from denial and alibi to consensual intercourse, to his utter detriment. As correctly observed by the Court of Appeals:

> From a complete denial of the occurrence of the rape incidents when he testified before the trial court, appellant now makes a sudden turn-around by admitting in the present appeal having had sexual intercourse with AAA that were, however, consensual as the latter never resisted his advances. But he offered no reason why AAA would consent to having sexual liaison with him. Albeit, a change

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[6] *Id*. at 186-187.

[7] CA *rollo*, pp. 173-190; penned by Associate Justice Rebecca De Guia-Salvador and concurred in by Associate Justices Sesinando E. Villon and Amy C. Lazaro-Javier.

[8] *Id*. at 190.

[9] *Rollo*, p. 20.

[10] *Id*. at 24-25.

[11] *Id*. at 33-40.

[12] CA *rollo*, p. 107.

[13] *Id*. at 108.

in theory merely accentuates the accused's lack of credibility and candor. Changing the defense on appeal is an indication of desperation on the part of the accused-appellant, due to the seeming inadequacy of his defense adopted in the first instance.[14]

Appellant next claims that the prosecution failed to establish that he intimidated or coerced "AAA" into having sexual intercourse with him.

We are not persuaded.

Contrary to appellant's contention, "AAA" testified that she was threatened, forced, and coerced into sexual copulation. When "AAA" was placed on the witness stand, she categorically testified that during the first rape incident, appellant threatened to hurt her if she would report the incident to anyone.[15] As regards the second rape incident, "AAA" declared that appellant consummated the dastardly act by pointing an "ice pick" at her.[16] Admittedly, these were not mentioned in "AAA's" *Sinumpaang Salaysay*; however, they did not diminish her credibility. As correctly held by the appellate court:

> That AAA failed to mention in her *Sinumpaang Salaysay* what she narrated in open court about appellant's threats on her life and his use of an ice pick as he unleashed his perversity, hardly affects her credibility.
>
> It is generally conceded that *ex parte* affidavits tend to be incomplete and inaccurate for lack of or absence of searching inquiries by the investigating officer. It is not a complete reproduction of what the declarant has in mind because it is generally prepared by the administering officer and the affiant simply signs it after it has been read to him. Hence, whenever there is a variance between the statements in the affidavit and those made in open court by the same witness, the latter generally [prevail]. Indeed, it is doctrinal that open court declarations take precedence over written affidavits in the hierarchy of evidence.

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[14] *Id*. at 185.

[15] TSN, July 7, 2006, p. 7.

[16] *Id*. at 9.

Moreover, during re-direct examination, AAA explained that her fear of appellant lingered in her consciousness and her young mind had yet to recover its bearings at the time she executed the *Sinumpaang Salaysay* leading to the incomplete account she made therein. In any case, an errorless recollection of a harrowing incident cannot be expected from a minor innocent rape victim, like AAA, especially when she was recounting details of an experience so humiliating and so painful as forced copulation. What is important is that the victim's declarations, both in her sworn statement and her testimony in court, are consistent on basic matters constituting the elements of the crime of rape and the positive identification of the culprit.[17]

Finally, both the trial court and the Court of Appeals correctly convicted appellant of simple rape, instead of statutory rape. "The elements of [statutory rape] are: (1) that the accused had carnal knowledge of a woman; and (2) that the woman is below 12 years of age x x x."[18] In this case, although the Informations alleged that "AAA" was 11 years of age when the rape incidents transpired, she was actually 13 years of age when the rape incidents transpired on December 25, 2004 and January 21, 2005, as her Certificate of Birth[19] showed that she was born on March 10, 1991. Thus, appellant is guilty only of simple, not statutory rape for which he was properly imposed the sentence of *reclusion perpetua* pursuant to Article 266-B of the Revised Penal Code. However, it must be mentioned that appellant is not eligible for parole pursuant to Section 3[20] of Republic Act No. 9346.[21]

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[17] CA *rollo*, p. 184.

[18] *People v. Amistoso*, G.R. No. 201447, January 9, 2013, 688 SCRA 376, 383.

[19] *Records*, pp. 5, 61.

[20] Sec. 3. Person convicted of offenses punished with *reclusion perpetua*, or whose sentences will be reduced to *reclusion perpetua*, by reason of this Act, shall not be eligible for parole under Act No. 4180, otherwise known as the Indeterminate Sentence Law, as amended.

[21] AN ACT PROHIBITING THE IMPOSITION OF DEATH PENALTY IN THE PHILIPPINES. Approved June 24, 2006.

The awards of ₱50,000.00 as moral damages and ₱50,000.00 as civil indemnity are likewise proper. However, the award of exemplary damages must be increased to ₱30,000.00 in line with prevailing jurisprudence.[22] Also, interest at the rate of 6% *per annum* shall be imposed from date of finality of this judgment until fully paid.

WHEREFORE, the October 21, 2010 Decision of the Court of Appeals in CA-G.R. CR H.C. No. 02880 finding appellant Rene Santiago guilty beyond reasonable doubt of two counts of simple rape and sentencing him to suffer the penalty of *reclusion perpetua* and to pay "AAA" civil indemnity of ₱50,000.00 and moral damages of ₱50,000.00 for each count is **AFFIRMED** with **MODIFICATIONS** that appellant is not eligible for parole; the amount of exemplary damages is increased to ₱30,000.00 for each count; and all damages awarded shall earn interest at the rate of 6% *per annum* from date of finality of this judgment until fully paid.

SO ORDERED.

Carpio (Chairperson), Brion, Perez, and *Perlas-Bernabe, JJ.,* concur.

FIRST DIVISION

[G.R. No. 199595. April 2, 2014]

PHILIPPINE WOMAN'S CHRISTIAN TEMPERANCE UNION, INC., *petitioner, vs.* **TEODORO R. YANGCO 2ND AND 3RD GENERATION HEIRS FOUNDATION, INC.,** *respondent.*

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[22] *People v. Vergara,* G.R. No. 199226, January 25, 2014.

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; DOCTRINE OF IMMUTABILITY; EXCEPTIONS.—** The doctrine [of immutability] postulates that a decision that has acquired finality becomes immutable and unalterable, and may no longer be modified in any respect, even if the modification is meant to correct erroneous conclusions of fact and law, and whether it is made by the court that rendered it or by the Highest Court of the land. Any act which violates this principle must immediately be struck down. x x x While firmly ingrained as a basic procedural tenet in Philippine jurisprudence, immutability of final judgments was never meant to be an inflexible tool to excuse and overlook prejudicial circumstances. The doctrine must yield to practicality, logic, fairness and substantial justice. Hence, it's application admits the following exceptions: (1) the correction of clerical errors; (2) the so-called *nunc pro tunc* entries which cause no prejudice to any party; (3) void judgments; and (4) whenever circumstances transpire after the finality of the decision rendering its execution unjust and inequitable.

2. **ID.; ID.; JURISDICTION OVER THE SUBJECT MATTER; DETERMINED BY THE ALLEGATIONS IN THE COMPLAINT AND THE RELIEF SOUGHT.—** It has been held that the jurisdiction of a court over the subject matter of a particular action is determined by the plaintiff's allegations in the complaint and the principal relief he seeks in the light of the law that apportions the jurisdiction of courts. Jurisdiction should be determined by considering not only the status or the relationship of the parties but also the nature of the issues or questions that is the subject of the controversy.

3. **CIVIL LAW; LAND TITLES; PROPERTY REGISTRATION DECREE (PD 1529); SECTION 108 ON CANCELLATION OF TITLE; NOT THE PROPER ACTION TO RECOVER A PROPERTY ALLEGING REVOCATION OF ITS DONATION; CASE AT BAR.—** Whether the donation merits revocation and consequently effect reversion of the donated property to the donor and/or his heirs cannot be settled by filing a mere petition for cancellation of title under Section 108 of P.D. No. 1529. x x x TRY Foundation's exposed action for revocation of the donation necessarily includes a claim for

the recovery of the subject property. x x x The petition of TRY Foundation had the effect of reopening the decree of registration in the earlier LRC Case No. 20970 which granted PWCTUI's application for the issuance of a new owner's duplicate copy of TCT No. 20970. As such, it breached the *caveat* in Section 108 that "this section shall not be construed to give the court authority to reopen the judgment or decree of registration." The petition of TRY Foundation also violated that portion in Section 108 stating that "all petitions or motions filed under this section as well as any other provision of this decree after original registration shall be filed and entitled in the original case in which the decree of registration was entered." The petition of TRY Foundation in LRC Case No. Q-18126(04) was clearly not a mere continuation of LRC Case No. 20970. Further, the petition filed by TRY Foundation is not within the province of Section 108 because the relief thereunder can only be granted if there is unanimity among the parties, or that there is no adverse claim or serious objection on the part of any party in interest. x x x More so, the enumerated instances for amendment or alteration of a certificate of title under Section 108 are non-controversial in nature. They are limited to issues so patently insubstantial as not to be genuine issues. The proceedings thereunder are summary in nature, contemplating insertions of mistakes which are only clerical, but certainly not controversial issues. Undoubtedly, revocation of donation entails litigious and controversial matters especially in this case where the condition supposedly violated by PWCTUI is not expressly stated in the deed of donation. Thus, it is imperative to conduct an exhaustive examination of the factual and legal bases of the parties' respective positions for a complete determination of the donor's desires. Certainly, such objective cannot be accomplished by the court through the abbreviated proceedings of Section 108. In fact, even if it were specifically imposed as a ground for the revocation of the donation that will set off the automatic reversion of the donated property to the donor and/or his heirs, court intervention is still indispensable.

4. REMEDIAL LAW; CIVIL PROCEDURE; REVOCATION OF DONATION; JURISDICTIONAL REQUIREMENTS STRICTER THAN IN LAND REGISTRATION CASES; ELABORATED.— [T]he issues embroiled in revocation of donation are litigable in an ordinary civil proceeding which

demands stricter jurisdictional requirements than that imposed in a land registration case. Foremost of which is the requirement on the service of summons for the court to acquire jurisdiction over the persons of the defendants. Without a valid service of summons, the court cannot acquire jurisdiction over the defendant, unless the defendant voluntarily submits to it. Service of summons is a guarantee of one's right to due process in that he is properly apprised of a pending action against him and assured of the opportunity to present his defenses to the suit. In contrast, jurisdiction in a land registration cases being a proceeding *in rem*, is acquired by constructive seizure of the land through publication, mailing and posting of the notice of hearing. Persons named in the application are not summoned but merely notified of the date of initial hearing on the petition. The payment of docket fees is another jurisdictional requirement for an action for revocation which was absent in the suit filed by TRY Foundation. On the other hand, Section 111 of P.D. No. 1529 merely requires the payment of filing fees and not docket fees. Filing fees are intended to take care of court expenses in the handling of cases in terms of cost of supplies, use of equipment, salaries and fringe benefits of personnel, *etc.*, computed as to man hours used in handling of each case. Docket fees, on the other hand, vest the trial court jurisdiction over the subject matter or nature of action. The absence of the above jurisdictional requirements for ordinary civil actions thus prevented the RTC, acting as a land registration court, from acquiring the power to hear and decide the underlying issue of revocation of donation in LRC Case No. Q-18126(04). Any determination made involving such issue had no force and effect; it cannot also bind PWCTUI over whom the RTC acquired no jurisdiction for lack of service of summons.

5. ID.; JURISDICTION; RTC ACTING AS LAND REGISTRATION COURT; NO JURISDICTION OVER THE ACTION FOR REVOCATION OF DONATION DISGUISED AS LAND REGISTRATION CASE; DECISION RENDERED THEREIN IS VOID; CASE AT BAR.— "Jurisdiction is the power with which courts are invested for administering justice; that is, for hearing and deciding cases. In order for the court to have authority to dispose of the case on the merits, it must acquire jurisdiction over the subject matter and the parties." [T]he RTC, acting as a land registration court, had no jurisdiction over the actual subject matter contained in TRY

Foundation's petition for issuance of a new title. TRY Foundation cannot use the summary proceedings in Section 108 of P.D. No. 1529 to rescind a contract of donation as such action should be threshed out in ordinary civil proceedings. In the same vein, the RTC had no jurisdiction to declare the donation annulled and as a result thereof, order the register of deeds to cancel PWCTUI's TCT No. 20970 T-22702 and issue a new one in favor of TRY Foundation. The RTC, acting as a land registration court, should have dismissed the land registration case or re-docketed the same as an ordinary civil action and thereafter ordered compliance with stricter jurisdictional requirements. Since the RTC had no jurisdiction over the action for revocation of donation disguised as a land registration case, the judgment in LRC Case No. Q-18126(04) is null and void. Being void, it cannot be the source of any right or the creator of any obligation. It can never become final and any writ of execution based on it is likewise void. It may even be considered as a lawless thing which can be treated as an outlaw and slain at sight, or ignored wherever and whenever it exhibits its head. Resultantly, the appellate proceedings relative to LRC Case No. Q-18126(04) and all issuances made in connection with such review are likewise of no force and effect. A void judgment cannot perpetuate even if affirmed on appeal by the highest court of the land. All acts pursuant to it and all claims emanating from it have no legal effect.

6. ID.; ID.; ISSUE OF JURISDICTION NOT LOST BY WAIVER OR BY ESTOPPEL; CASE AT BAR.— The issue of jurisdiction is not lost by waiver or by estoppel; no laches will even attach to a judgment rendered without jurisdiction. Hence, since the Court Resolutions dated July 21, 2010 and September 15, 2010 in G.R. No. 190193 disposed the case only insofar as the factual and legal questions brought before the CA were concerned, they cannot operate as a procedural impediment to the present ruling which deals with mistake of jurisdiction. This is not to say, however, that a *certiorari* before the Court is a remedy against its own final and executory judgment. As made known in certain cases, the Court is invested with the power to suspend the application of the rules of procedure as a necessary complement of its power to promulgate the same. x x x Here, the grave error in jurisdiction permeating the proceedings taken in LRC Case No. Q-18126(04) deprived

PWCTUI of its property without the very foundation of judicial proceedings – due process. Certainly, the Court cannot let this mistake pass without *de rigueur* rectification by suspending the rules of procedure and permitting the present recourse to access auxiliary review. If the Court, as the head and guardian of the judicial branch, must continuously merit the force of public trust and confidence — which ultimately is the real source of its sovereign power — and if it must decisively discharge its sacred duty as the last sanctuary of the oppressed and the weak, it must, in appropriate cases, pro-actively provide weary litigants with immediate legal and equitable relief, free from the delays and legalistic contortions that oftentimes result from applying purely formal and procedural approaches to judicial dispensations.

APPEARANCES OF COUNSEL

Perfecto E. Mirador, Jr. for petitioner.
Cruz Enverga & Lucero for respondent.

D E C I S I O N

REYES, *J.*:

This is a petition for *certiorari* and prohibition[1] under Rule 65 of the Rules of Court seeking the issuance of an order commanding the Register of Deeds of Quezon City and the Court Sheriff of the Regional Trial Court (RTC) of Quezon City, Branch 218, to cease and desist from implementing the Court Resolutions dated July 21, 2010[2] and September 15, 2010[3] in G.R. No. 190193 denying with finality Philippine Woman's Christian Temperance Union, Inc.'s (PWCTUI) petition for review of the Court of Appeals (CA) Decision[4] dated November 6, 2009 in CA-G.R.

[1] *Rollo*, pp. 3-30.

[2] *Id*. at 32.

[3] *Id*. at 33.

[4] Penned by Associate Justice Normandie B. Pizarro, with Associate Justices Rosalinda Asuncion-Vicente and Ricardo R. Rosario, concurring; *id.* at 134-143.

CV No. 90763 which affirmed the Decision[5] dated January 24, 2008 of the RTC in LRC Case No. Q-18126(04) disposing as follows:

WHEREFORE, the Register of Deeds of Quezon City is hereby ordered to cancel TCT No. 20970 T-22702 and issue in lieu thereof a new title in the name of Teodoro R. Yangco 2nd and 3rd Generation Heirs Foundation, Inc. free from all liens and encumbrances.

SO ORDERED.[6]

PWCTUI also prays, as ancillary remedy, for the re-opening of LRC Case No. Q-18126(04) and as provisional remedy, for the issuance of a temporary restraining order (TRO) and/or a writ of preliminary injunction.

The Antecedents

On May 19, 2004, respondent Teodoro R. Yangco (2nd and 3rd Generation Heirs) Foundation, Inc. (TRY Foundation) filed before the RTC of Quezon City, acting as a Land Registration Court, a Petition for the Issuance of New Title in Lieu of Transfer Certificate of Title (TCT) No. 20970 T-22702 of the Office of the Register of Deeds of Quezon City docketed as LRC Case No. Q-18126(04).[7]

TRY Foundation alleged that it is composed of the 2nd and 3rd generation heirs and successors-in-interest to the first generation testamentary heirs of the late philanthropist Teodoro R. Yangco (Yangco) who donated on May 19, 1934 a 14,073-square meter parcel of land (subject property) located at 21 Boni Serrano Avenue, Quezon City in the following manner,[8] *viz*:

a) the property shall be used as a site for an institution to be known as the Abierrtas House of Friendship the purpose of which shall be

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[5] Issued by Judge Hilario L. Laqui; *id*. at 103-114.

[6] *Id*. at 114.

[7] *Id*. at 81-85.

[8] *Id*. at 103-104.

to provide a Home for needy and unfortunate women and girls, including children of both sexes and promote, foster all efforts, work and activities looking toward their protection from the ravages of all forms of immoralities;

b) Should the property herein be used for any other purpose or purposes not herein specified, the present gift shall become *ipso facto* null and void and property given shall automatically revert to the donor, his heirs and assigns, but any improvement or improvements placed, constructed and/or maintained on said premises by the Donee, shall remain the property of said Donee to be by it removed there[f]rom (sic) at its expense after reasonable notice from the donor, his heirs and assigns.[9]

The property was registered in the name of PWCTUI by virtue of TCT No. 20970 at the back of which the above-quoted conditions of the donation were annotated. PWCTUI is a non-stock, non-profit corporation originally registered with the Securities and Exchange Commission (SEC) in 1929 under SEC Registration No. PW-959.[10]

PWCTUI's corporate term expired in September 1979.[11] Five years thereafter, using the same corporate name, PWCTUI obtained SEC Registration No. 122088[12] and forthwith applied for the issuance of a new owner's duplicate copy of TCT No. 20970 over the subject property thru LRC Case No. 22702. The application was granted and PWCTUI was issued a new TCT No. 20970 T-22702[13] which, however, bore only the first condition imposed on the donation.

Recounting the foregoing episodes, TRY Foundation claimed that the expiration of PWCTUI's corporate term in 1979 effectively rescinded the donation pursuant to the "unwritten resolutory condition" deemed written by Article 1315 of the

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[9] *Id.* at 82.

[10] *Id.* at 34-38.

[11] *Id.* at 87.

[12] *Id.* at 51-60.

[13] *Id.* at 61-66.

Civil Code[14] prescribing that the Corporation Code, specifically Section 122[15] thereof, be read into the donation. Interestingly the latter provision mandates dissolved corporation to wind up their affairs and dispose of their assets within three years from the expiration of their term. Being comprised of the heirs of the donor, TRY Foundation claimed that it is entitled to petition for the issuance of a new title in their name pursuant to Section 108 of Presidential Decree (P.D.) No. 1529.[16] TRY Foundation prayed for the issuance of a new title in its name after the cancellation of PWCTUI's TCT No. 20970 T-22702.

PWCTUI opposed the petition arguing that: (1) TRY Foundation has no legal personality to bring the action because

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[14] Art. 1315. Contracts are perfected by mere consent, and from that moment the parties are bound not only to the fulfillment of what has been expressly stipulated but also to all the consequences which, according to their nature, may be in keeping with good faith, usage and law.

[15] Sec. 122. Corporate liquidation.– Every corporation whose charter expires by its own limitation or is annulled by forfeiture or otherwise, or whose corporate existence for other purposes is terminated in any other manner, shall nevertheless be continued as a body corporate for three (3) years after the time when it would have been so dissolved, for the purpose of prosecuting and defending suits by or against it and enabling it to settle and close its affairs, to dispose of and convey its property and to distribute its assets, but not for the purpose of continuing the business for which it was established.

At any time during said three (3) years, the corporation is authorized and empowered to convey all of its property to trustees for the benefit of stockholders, members, creditors, and other persons in interest. From and after any such conveyance by the corporation of its property in trust for the benefit of its stockholders, members, creditors and others in interest, all interest which the corporation had in the property terminates, the legal interest vests in the trustees, and the beneficial interest in the stockholders, members, creditors or other persons in interest.

Upon the winding up of the corporate affairs, any asset distributable to any creditor or stockholder or member who is unknown or cannot be found shall be escheated to the city or municipality where such assets are located.

Except by decrease of capital stock and as otherwise allowed by this Code, no corporation shall distribute any of its assets or property except upon lawful dissolution and after payment of all its debts and liabilities.

[16] Otherwise known as the Property Registration Decree.

the donation has never been revoked and any right to demand for its revocation already prescribed; (2) although PCWTUI's corporate term was not extended upon its expiration in 1979, it nonetheless registered anew and continued the operations, affairs and social work of the corporation; it also continued to possess the property and exercised rights of ownership over it; (3) only the appropriate government agency and not TRY Foundation or any other private individual can challenge the corporate life and existence of PCWTUI; (4) TRY Foundation and its counsel are guilty of forum shopping because they have already questioned PWCTUI's corporate personality in a different forum but failed to obtain a favorable relief; (5) TRY Foundation is guilty of fraud for failing to include PWCTUI as an indispensable party and to furnish it with a copy of the petition; and (6) the RTC has no jurisdiction over the petition because PWCTUI is unaware of its publication.[17]

In a Resolution dated April 4, 2005, the RTC denied the Opposition[18] of PWCTUI. According to the trial court, when the corporate life of PWCTUI expired in 1979, the property ceased to be used for the purpose for which it was intended, hence, it automatically reverted to Yangco. As such, TRY Foundation, being composed of his heirs, is considered "*other person in interest*" under Section 108 of P.D. No. 1529 with a right to file a petition for the issuance of title over the property.

Hearings were thereafter held for the reception of evidence of TRY Foundation. On January 24, 2008, the RTC rendered its Decision[19] sustaining TRY Foundation's petition.

The RTC ruled that PWCTUI, with SEC Registration No. PW-959 in whose name the property was registered is separate and distinct from oppositor PWCTUI with SEC Registration No. 122088. The legal personality of PWCTUI (PW-959) *ipso facto* ended when its registration expired in September 1979.

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[17] *Rollo*, pp. 88-91.

[18] *Id*.

[19] *Id*. at 103-114.

The new PWCTUI (122088) has its own personality separate and distinct from PWCTUI (PW-959) hence the latter is not the donee and thus has no claim to the property. As such, the reversion clause in the donation came about and the property must revert to the donor or his heirs, thus:

> It is clear that Don Teodoro R. Yangco is the primary reversion owner of the property. He is succeeded as reversion owner by the first generation heirs or those testamentary heirs named in his Last Will and Testament which will was admitted to probate by the Supreme Court in the abovecited case. The second generation heirs are the nieces and nephews of Don Teodoro R. Yangco and the sons/daughters of the "strangers" named in the will. The second generation heirs succeeded the first generation/testamentary heirs in their own right. x x x.[20] (Citations omitted)

The RTC granted TRY Foundation's petition by ordering the cancellation of PWCTUI's TCT No. 20970 T-22702 and the issuance of a new title in the name of TRY Foundation.[21]

PWCTUI appealed to the CA, arguing, among others, that it must be determined whether the condition imposed in the donation has already occurred or deemed fulfilled. The appeal was docketed as CA-G.R. CV No. 90763. In its Decision[22] dated November 6, 2009, the CA affirmed the RTC's findings. The CA added that the subsequent re-registration of PWCTUI (122088) did not revive or continue the corporate existence of PWCTUI (PW-959). Hence, PWCTUI (122088) is not the real donee contemplated in the donation made by Yangco and as such any issue on revocation of donation is improper. The CA Decision disposed thus:

> **WHEREFORE**, the appeal is **DENIED.** The assailed *Decision* is **AFFIRMED** *in toto*. Costs against [PWCTUI].
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> **SO ORDERED**.[23]

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[20] *Id*. at 113.

[21] *Id*. at 114.

[22] *Id*. at 134-143.

[23] *Id*. at 142.

PWCTUI sought recourse with the Court thru a petition for review on *certiorari* docketed as G.R. No. 190193. In a Resolution[24] dated July 21, 2010, we denied the petition for failure to sufficiently show any reversible error in the assailed CA decision. PWCTUI moved for reconsideration but its motion was denied with finality in another Resolution[25] dated September 15, 2010. An entry of judgment was thereafter issued stating that the Court Resolution dated July 21, 2010 became final and executory on October 20, 2010.[26]

On December 23, 2011, PWCTUI filed the herein petition captioned as one for "*Prohibition & Certiorari and to Re-Open the Case with Prayer for Issuance of Temporary Restraining Order (TRO) &/or Writ of Preliminary Injunction*."[27] PWCTUI prayed for the following reliefs:

> a.) a TRO and/or a writ of preliminary injunction be issued preventing and/or enjoining public respondents, Register of Deeds of Quezon City and the Sheriff of the RTC of Quezon City, Branch 218 from executing the RTC Decision dated January 24, 2008;
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> b.) to make the injunction permanent by annulling and setting aside all orders, decisions, resolutions and proceedings issued and taken in relation to LRC Case No. Q-18126(04) before the trial and appellate courts for having been promulgated in excess of jurisdiction or with grave abuse of discretion; and
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> c.) LRC Case No. Q-18126(04) be re-opened, re-considered and re-studied in the interest of true and fair justice.

In support of its pleas, PWCTUI submitted the following arguments:

> a. based on the deed of donation, the expiration of PWCTUI's corporate term is not stated as a ground for the

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[24] *Id*. at 32.

[25] *Id*. at 33.

[26] *Id*. at 144.

[27] *Id*. at 3-30.

nullification of the donation and the operation of the reversion clause;

b. the commercial leasing of portions of the donated land did not violate the condition in the donation because the lease contract with Jelby Acres was pursued for the generation of funds in order for PWCTUI to carry on the charitable purposes of the Abiertas House of Friendship;

c. TRY Foundation has no legal standing or cause of action to claim the land because its members are not the true heirs of Yangco who died single and without descendants. His only relatives are his half-siblings who are the legitimate children of his mother, Doña Ramona Arguelles Corpus and her first husband Tomas Corpus, hence, no right of inheritance *ab intestato* can take place between them pursuant to Article 992 of the Civil Code; and

d. Even assuming that TRY Foundation has a cause of action for the revocation of the donation, the same has already prescribed because more than 40 years has lapsed from the date the donation was made in May 19, 1934.

The Court's Ruling

On its face, it is immediately apparent that the petition merits outright dismissal in view of the doctrine of immutability attached to the Court's final and executory Resolutions dated July 21, 2010 and September 15, 2010 in G.R. No. 190193.

The doctrine postulates that a decision that has acquired finality becomes immutable and unalterable, and may no longer be modified in any respect, even if the modification is meant to correct erroneous conclusions of fact and law, and whether it is made by the court that rendered it or by the Highest Court of the land. Any act which violates this principle must immediately be struck down.[28]

A long and intent study, however, of the arguments raised in the present recourse *vis-à-vis* the proceedings taken in LRC

[28] *FGU Insurance Corporation v. RTC of Makati City, Branch 66*, G.R. No. 161282, February 23, 2011, 644 SCRA 50, 56.

Case No. Q-18126(04) disclose that it is necessary, obligatory even, for the Court to accord affirmative consideration to the supplications tendered by PWCTUI in the petition at bar.

While firmly ingrained as a basic procedural tenet in Philippine jurisprudence, immutability of final judgments was never meant to be an inflexible tool to excuse and overlook prejudicial circumstances. The doctrine must yield to practicality, logic, fairness and substantial justice. Hence, it's application admits the following exceptions: (1) the correction of clerical errors; (2) the so-called *nunc pro tunc* entries which cause no prejudice to any party; (3) void judgments; and (4) whenever circumstances transpire after the finality of the decision rendering its execution unjust and inequitable.[29]

Here, the third exception is attendant. The nullity of the RTC judgment and all subsequent rulings affirming the same, render inoperative the doctrine of immutability of judgment, and consequently justify the propriety of giving due course to the present petition.

To expound, the RTC judgment in LRC Case No. Q-18126(04) and all proceedings taken in relation thereto were void because the RTC did not acquire jurisdiction over the fundamental subject matter of TRY Foundation's petition for the issuance of a title which was in reality, a complaint for revocation of donation, an ordinary civil action outside the ambit of Section 108 of P.D. No. 1529.

The petition filed by TRY Foundation was a disguised complaint for revocation of donation.

It has been held that the jurisdiction of a court over the subject matter of a particular action is determined by the plaintiff's allegations in the complaint and the principal relief he seeks in the light of the law that apportions the jurisdiction of courts.[30]

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[29] *Id*.

[30] *Heirs of Generoso Sebe v. Heirs of Veronico Sevilla*, G.R. No. 174497, October 12, 2009, 603 SCRA 395, 400.

Jurisdiction should be determined by considering not only the status or the relationship of the parties but also the nature of the issues or questions that is the subject of the controversy.[31]

The petition is premised on allegations that the deed of donation from whence PWCTUI derived its title was automatically revoked when the latter's original corporate term expired in 1979. Consequently, reversion took effect in favor of the donor and/or his heirs. As relief, TRY Foundation sought the cancellation of TCT No. 20970 T-22702 and the issuance of a new title in its name, to wit:

WHEREFORE, in view of all the foregoing, it is respectfully prayed of the Hon. Court that after due hearing, the Hon. Court render judgment:

Ordering the Register of Deeds of Quezon City to cancel TCT No. 20970 T-22702 and issue in lieu thereof a new title in the name of TRY Heirs (2nd and 3rd Generation) Heirs Foundation, Inc. free from all liens and encumbrances.[32]

The above contentions and plea betray the caption of the petition. Observably, TRY Foundation is actually seeking to recover the possession and ownership of the subject property from PWCTUI and not merely the cancellation of PWCTUI's TCT No. 20970 T-22702. The propriety of pronouncing TRY Foundation as the absolute owner of the subject property rests on the resolution of whether or not the donation made to PWCTUI has been effectively revoked when its corporate term expired in 1979. Stated otherwise, no judgment proclaiming TRY Foundation as the absolute owner of the property can be arrived at without declaring the deed of donation revoked.

The Court made a similar observation in *Dolar v. Barangay Lublub* (*now P.D. Monfort North*), *Municipality of Dumangas*,[33]

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[31] *Figueroa v. People*, 580 Phil. 58, 78 (2008), citing *Heirs of Julian Dela Cruz and Leonora Talaro v. Heirs of Alberto Cruz*, 475 SCRA 743, 756.

[32] *Rollo*, p. 84.

[33] G.R. No. 152663, November 18, 2005, 475 SCRA 458.

the facts of which bear resemblance to the facts at hand. In *Dolar*, the petitioner filed a complaint for quieting of title and recovery of possession with damages involving a land he had earlier donated to the respondent. The petitioner claimed that the donation had ceased to be effective when the respondent failed to comply with the conditions of the donation. As relief, the petitioner prayed that he be declared the absolute owner of the property. The complaint was dismissed by the trial court on the ground that the petitioner's cause of action for revocation has already prescribed and as such, its claim for quieting of title is ineffective notwithstanding that the latter cause of action is imprescriptible. In sustaining such dismissal, the Court remarked:

> As aptly observed by the trial court, the petitory portion of petitioner's complaint in Civil Case No. 98-033 seeks for a judgment declaring him the absolute owner of the donated property, a plea which necessarily includes the revocation of the deed of donation in question. Verily, a declaration of petitioner's absolute ownership appears legally possible only when the deed of donation is contextually declared peremptorily revoked.
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> x x x x x x x x x
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> It cannot be overemphasized that respondent *barangay* traces its claim of ownership over the disputed property to a valid contract of donation which is yet to be effectively revoked. Such rightful claim does not constitute a cloud on the supposed title of petitioner over the same property removable by an action to quiet title. Withal, the remedy afforded in Article 476 of the Civil Code is unavailing until the donation shall have first been revoked in due course under Article 764 or Article 1144 of the Code.[34]

An action which seeks the recovery of property is outside the ambit of Section 108 of P.D. No. 1529.

Whether the donation merits revocation and consequently effect reversion of the donated property to the donor and/or his heirs cannot be settled by filing a mere petition for cancellation of title under Section 108 of P.D. No. 1529 which reads:

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[34] *Id.* at 471-472.

Sec. 108. Amendment and alteration of certificates. – No erasure, alteration, or amendment shall be made upon the registration book after the entry of a certificate of title or of a memorandum thereon and the attestation of the same by the Register of Deeds, except by order of the proper Court of First Instance. A registered owner or other person having interest in the registered property, or, in proper cases, the Register of Deeds with the approval of the Commissioner of Land Registration, may apply by petition to the court upon the ground that the registered interest of any description, whether vested, contingent, expectant or inchoate appearing on the certificate, have terminated and ceased; or that new interest not appearing upon the certificate have arisen or been created; or that an omission or an error was made in entering a certificate or any memorandum thereon, or on any duplicate certificate: or that the same or any person in the certificate has been changed or that the registered owner has married, or, if registered as married, that the marriage has been terminated and no right or interest of heirs or creditors will thereby be affected; or that a corporation which owned registered land and has been dissolved has not yet convened the same within three years after its dissolution; or upon any other reasonable ground; and the court may hear and determine the petition after notice to all parties in interest, and may order the entry or cancellation of a new certificate, the entry or cancellation of a memorandum upon a certificate, or grant any other relief upon such terms and conditions, requiring security and bond if necessary, as it may consider proper; Provided, however, That this section shall not be construed to give the court authority to reopen the judgment or decree of registration, and that nothing shall be done or ordered by the court which shall impair the title or other interest of a purchaser holding a certificate for value and in good faith, or his heirs and assigns without his or their written consent. Where the owner's duplicate certificate is not presented, a similar petition may be filed as provided in the preceding section.

All petitions or motions filed under this section as well as any other provision of this decree after original registration shall be filed and entitled in the original case in which the decree of registration was entered.

A parallel issue was encountered by the Court in *Paz v. Republic of the Philippines*,[35] which involved a petition for the

[35] G.R. No. 157367, November 23, 2011, 661 SCRA 74.

cancellation of title brought under the auspices of Section 108 of P.D. No. 1529. The petition sought the cancellation of Original Certificate of Title No. 684 issued thru LRC Case No. 00-059 in favor of the Republic, Filinvest Development Corporation and Filinvest Alabang, Inc., and the issuance of a new title in the name of the petitioner therein. The petition was dismissed by the RTC. The dismissal was affirmed by the CA and eventually by this Court on the following reasons:

> We agree with both the CA and the RTC that the petitioner was in reality seeking the reconveyance of the property covered by OCT No. 684, not the cancellation of a certificate of title as contemplated by Section 108 of P.D. No. 1529. Thus, his petition did not fall under any of the situations covered by Section 108, and was for that reason rightly dismissed.
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> Moreover, the filing of the petition would have the effect of reopening the decree of registration, and could thereby impair the rights of innocent purchasers in good faith and for value. To reopen the decree of registration was no longer permissible, considering that the one-year period to do so had long ago lapsed, and the properties covered by OCT No. 684 had already been subdivided into smaller lots whose ownership had passed to third persons. x x x.
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> Nor is it subject to dispute that the petition was not a mere continuation of a previous registration proceeding. Shorn of the thin disguise the petitioner gave to it, the petition was exposed as a distinct and independent action to seek the reconveyance of realty and to recover damages. Accordingly, he should perform jurisdictional acts, like paying the correct amount of docket fees for the filing of an initiatory pleading, causing the service of summons on the adverse parties in order to vest personal jurisdiction over them in the trial court, and attaching a certification against forum shopping (as required for all initiatory pleadings). He ought to know that his taking such required acts for granted was immediately fatal to his petition, warranting the granting of the respondents' motion to dismiss.[36]

By analogy, the above pronouncements may be applied to the controversy at bar considering that TRY Foundation's exposed

[36] *Id*. at 81-82.

action for revocation of the donation necessarily includes a claim for the recovery of the subject property.

The circumstances upon which the ruling in *Paz* was premised are attendant in the present case. The petition of TRY Foundation had the effect of reopening the decree of registration in the earlier LRC Case No. 20970 which granted PWCTUI's application for the issuance of a new owner's duplicate copy of TCT No. 20970. As such, it breached the *caveat* in Section 108 that "this section shall not be construed to give the court authority to reopen the judgment or decree of registration." The petition of TRY Foundation also violated that portion in Section 108 stating that "all petitions or motions filed under this section as well as any other provision of this decree after original registration shall be filed and entitled in the original case in which the decree of registration was entered." The petition of TRY Foundation in LRC Case No. Q-18126(04) was clearly not a mere continuation of LRC Case No. 20970.

Further, the petition filed by TRY Foundation is not within the province of Section 108 because the relief thereunder can only be granted if there is unanimity among the parties, or that there is no adverse claim or serious objection on the part of any party in interest.[37] Records show that in its opposition to the petition, PWCTUI maintained that it "remains and continues to be the true and sole owner in fee simple of the property" and that TRY Foundation "has no iota of right" thereto.[38]

More so, the enumerated instances for amendment or alteration of a certificate of title under Section 108 are non-controversial in nature. They are limited to issues so patently insubstantial as not to be genuine issues. The proceedings thereunder are summary in nature, contemplating insertions of mistakes which are only clerical, but certainly not controversial

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[37] *Hilaria Bagayas v. Rogelio Bagayas, Felicidad Bagayas, Rosalina Bagayas, Michael Bagayas and Mariel Bagayas*, G.R. Nos. 187308 & 187517, September 18, 2013.

[38] *Rollo,* p. 88.

issues.[39] Undoubtedly, revocation of donation entails litigious and controversial matters especially in this case where the condition supposedly violated by PWCTUI is not expressly stated in the deed of donation. Thus, it is imperative to conduct an exhaustive examination of the factual and legal bases of the parties' respective positions for a complete determination of the donor's desires. Certainly, such objective cannot be accomplished by the court through the abbreviated proceedings of Section 108.

In fact, even if it were specifically imposed as a ground for the revocation of the donation that will set off the automatic reversion of the donated property to the donor and/or his heirs, court intervention is still indispensable.

As ruled in *Vda. de Delgado v. CA*,[40] "[a]lthough automatic reversion immediately happens upon a violation of the condition and therefore no judicial action is necessary for such purpose, still judicial intervention must be sought by the aggrieved party if only for the purpose of determining the propriety of the rescission made."[41] In addition, where the donee denies the rescission of the donation or challenges the propriety thereof, only the final award of the court can conclusively settle whether the resolution is proper or not.[42] Here, PWCTUI unmistakably refuted the allegation that the expiration of its corporate term in 1979 rescinded the donation.

Lastly, the issues embroiled in revocation of donation are litigable in an ordinary civil proceeding which demands stricter jurisdictional requirements than that imposed in a land registration case.

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[39] *Quevada v. Glorioso*, 356 Phil. 105, 118 (1998). The provision referred to in the case is Section 112 of Land Registration Act, the previous version of Section 108 before P.D. No. 1529 took effect.

[40] 416 Phil. 263 (2001).

[41] *Id*. at 273.

[42] *Supra* note 33, at 470.

Foremost of which is the requirement on the service of summons for the court to acquire jurisdiction over the persons of the defendants. Without a valid service of summons, the court cannot acquire jurisdiction over the defendant, unless the defendant voluntarily submits to it. Service of summons is a guarantee of one's right to due process in that he is properly apprised of a pending action against him and assured of the opportunity to present his defenses to the suit.[43]

In contrast, jurisdiction in a land registration cases being a proceeding *in rem*, is acquired by constructive seizure of the land through publication, mailing and posting of the notice of hearing.[44] Persons named in the application are not summoned but merely notified of the date of initial hearing on the petition.[45]

The payment of docket fees is another jurisdictional requirement for an action for revocation which was absent in the suit filed by TRY Foundation. On the other hand, Section 111 of P.D. No. 1529 merely requires the payment of filing fees and not docket fees.

Filing fees are intended to take care of court expenses in the handling of cases in terms of cost of supplies, use of equipment, salaries and fringe benefits of personnel, *etc*., computed as to man hours used in handling of each case. Docket fees, on the other hand, vest the trial court jurisdiction over the subject matter or nature of action.[46]

The absence of the above jurisdictional requirements for ordinary civil actions thus prevented the RTC, acting as a land registration court, from acquiring the power to hear and decide the underlying issue of revocation of donation in LRC Case No. Q-18126(04). Any determination made involving such issue had no force and effect; it cannot also bind PWCTUI over whom the RTC acquired no jurisdiction for lack of service of summons.

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[43] *Manotoc v. CA*, 530 Phil. 454, 467-468 (2006).

[44] *Republic of the Phils. v. Herbieto,* 498 Phil. 227, 239 (2005).

[45] *P.D. No. 1529*, Section 23.

[46] *Dela Paz v. CA*, 385 Phil. 441, 446 (2000).

"Jurisdiction is the power with which courts are invested for administering justice; that is, for hearing and deciding cases. In order for the court to have authority to dispose of the case on the merits, it must acquire jurisdiction over the subject matter and the parties."[47]

Conclusion

All told, the RTC, acting as a land registration court, had no jurisdiction over the actual subject matter contained in TRY Foundation's petition for issuance of a new title. TRY Foundation cannot use the summary proceedings in Section 108 of P.D. No. 1529 to rescind a contract of donation as such action should be threshed out in ordinary civil proceedings. In the same vein, the RTC had no jurisdiction to declare the donation annulled and as a result thereof, order the register of deeds to cancel PWCTUI's TCT No. 20970 T-22702 and issue a new one in favor of TRY Foundation.

The RTC, acting as a land registration court, should have dismissed the land registration case or re-docketed the same as an ordinary civil action and thereafter ordered compliance with stricter jurisdictional requirements. Since the RTC had no jurisdiction over the action or revocation of donation disguised as a land registration case, the judgment in LRC Case No. Q-18126(04) is null and void. Being void, it cannot be the source of any right or the creator of any obligation. It can never become final and any writ of execution based on it is likewise void.[48] It may even be considered as a lawless thing which can be treated as an outlaw and slain at sight, or ignored wherever and whenever it exhibits its head.[49]

Resultantly, the appellate proceedings relative to LRC Case No. Q-18126(04) and all issuances made in connection with

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[47] *Cosco Philippines Shipping, Inc. v. Kemper Insurance Company*, G.R. No. 179488, April 23, 2012, 670 SCRA 343, 355.

[48] *Ga, Jr. v. Tubungan*, G.R. No. 182185, September 18, 2009, 600 SCRA 739, 746.

[49] *Leonor v. CA*, 326 Phil. 74, 88 (1996).

such review are likewise of no force and effect. A void judgment cannot perpetuate even if affirmed on appeal by the highest court of the land. All acts pursuant to it and all claims emanating from it have no legal effect.[50]

The Court Resolutions dated July 21, 2010 and September 15, 2010 do not bar the present ruling.

It is worth emphasizing that despite PWCTUI's incessant averment of the RTC's lack of jurisdiction over TRY Foundation's petition, the trial court shelved the issue, took cognizance of matters beyond those enveloped under Section 108 and sorted out, in abridged proceedings, complex factual issues otherwise determinable in a full-blown trial appropriate for an ordinary civil action.

PWCTUI no longer raised the jurisdiction issue before the CA and limited its appeal to the factual findings and legal conclusions of the RTC on its corporate existence and capacity as the subject property's uninterrupted owner. The matter reached the Court thru a petition for review under Rule 45, but with the question of jurisdiction absent in the appellate pleadings, the Court was constrained to review only mistakes of judgment.

While PWCTUI could have still challenged the RTC's jurisdiction even on appeal, its failure to do so cannot work to its disadvantage. The issue of jurisdiction is not lost by waiver or by estoppel; no laches will even attach to a judgment rendered without jurisdiction.[51]

Hence, since the Court Resolutions dated July 21, 2010 and September 15, 2010 in G.R. No. 190193 disposed the case only insofar as the factual and legal questions brought before the CA were concerned, they cannot operate as a procedural impediment to the present ruling which deals with mistake of jurisdiction.

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[50] *Supra* note 48.

[51] *Figueroa v. People, supra* note 31, at 71.

This is not to say, however, that a *certiorari* before the Court is a remedy against its own final and executory judgment. As made known in certain cases, the Court is invested with the power to suspend the application of the rules of procedure as a necessary complement of its power to promulgate the same.[52] *Barnes v. Hon. Quijano Padilla*[53] discussed the rationale for this tenet, *viz*:

> Let it be emphasized that the rules of procedure should be viewed as mere tools designed to facilitate the attainment of justice. Their strict and rigid application, which would result in technicalities that tend to frustrate rather than promote substantial justice, must always be eschewed. Even the Rules of Court reflect this principle. The power to suspend or even disregard rules can be so pervasive and compelling as to alter even that which this Court itself has already declared to be final, x x x.
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> *The emerging trend in the rulings of this Court is to afford every party litigant the amplest opportunity for the proper and just determination of his cause, free from the constraints of technicalities. Time and again, this Court has consistently held that rules must not be applied rigidly so as not to override substantial justice.*[54] (Citation omitted and italics supplied)

Here, the grave error in jurisdiction permeating the proceedings taken in LRC Case No. Q-18126(04) deprived PWCTUI of its property without the very foundation of judicial proceedings –

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[52] 1987 CONSTITUTION, Article VIII, Section 5(5):

> Section 5. The Supreme Court shall have the following powers.
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> x x x x x x x x x
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> (5) Promulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice, and procedure in all courts, the admission to the practice of law, the Integrated Bar, and legal assistance to the underprivileged. Such rules shall provide a simplified and inexpensive procedure for the speedy disposition of cases, shall be uniform for all courts of the same grade, and shall not diminish, increase, or modify substantive rights. Rules of procedure of special courts and quasi-judicial bodies shall remain effective unless disapproved by the Supreme Court.

[53] 500 Phil. 303 (2005).

[54] *Id*. at 311.

due process. Certainly, the Court cannot let this mistake pass without *de rigueur* rectification by suspending the rules of procedure and permitting the present recourse to access auxiliary review.

If the Court, as the head and guardian of the judicial branch, must continuously merit the force of public trust and confidence — which ultimately is the real source of its sovereign power — and if it must decisively discharge its sacred duty as the last sanctuary of the oppressed and the weak, it must, in appropriate cases, pro-actively provide weary litigants with immediate legal and equitable relief, free from the delays and legalistic contortions that oftentimes result from applying purely formal and procedural approaches to judicial dispensations.[55]

WHEREFORE, all things studiedly viewed in the correct perspective, the petition is hereby **GRANTED**. All proceedings taken, decisions, resolutions, orders and other issuances made in LRC Case No. Q-18126(04), CA-G.R. CV No. 90763 and G.R. No. 190193 are hereby **ANNULLED** and **SET ASIDE**.

The Register of Deeds of Quezon City is hereby **ORDERED** to **CANCEL** any Transfer Certificate of Title issued in the name of Teodoro R. Yangco 2nd and 3rd Generation Heirs Foundation, Inc. as a consequence of the execution of the disposition in LRC Case No. Q-18126(04), and to **REINSTATE** Transfer Certificate of Title No. 20970 T-22702 in the name of Philippine Woman's Christian Temperance Union, Inc.

SO ORDERED.

Sereno, C.J. (Chairperson), Leonardo-de Castro, Bersamin, and *Villarama, Jr., JJ.,* concur.

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[55] *Leonor v. CA, supra* note 49, at 82.

FIRST DIVISION

[G.R. No. 201072. April 2, 2014]

UNITED PHILIPPINE LINES, INC. and HOLLAND AMERICA LINE, *petitioners, vs.* **GENEROSO E. SIBUG,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; OVERSEAS EMPLOYMENT; CIRCUMSTANCES WHEN A SEAMAN MAY BE ALLOWED TO PURSUE AN ACTION FOR PERMANENT AND TOTAL DISABILITY BENEFITS.— In *Millan v. Wallem Maritime Services, Inc.*, we listed the following circumstances when a seaman may be allowed to pursue an action for permanent and total disability benefits: **(a) The company-designated physician failed to issue a declaration as to his fitness to engage in sea duty or disability even after the lapse of the 120-day period and there is no indication that further medical treatment would address his temporary total disability, hence, justify an extension of the period to 240 days; (b) 240 days had lapsed without any certification issued by the company-designated physician;** (c) The company-designated physician declared that he is fit for sea duty within the 120-day or 240-day period, as the case may be, but his physician of choice and the doctor chosen under Section 20-B(3) of the POEA-SEC are of a contrary opinion; (d) The company-designated physician acknowledged that he is partially permanently disabled but other doctors who he consulted, on his own and jointly with his employer, believed that his disability is not only permanent but total as well; (e) The company-designated physician recognized that he is totally and permanently disabled but there is a dispute on the disability grading; (f) The company-designated physician determined that his medical condition is not compensable or work-related under the POEA-SEC but his doctor-of-choice and the third doctor selected under Section 20-B(3) of the POEA-SEC found otherwise and declared him unfit to work; (g) The company-designated physician declared him totally and permanently disabled but the employer refuses to pay him the

corresponding benefits; and (h) The company-designated physician declared him partially and permanently disabled within the 120-day or 240-day period but he remains incapacitated to perform his usual sea duties after the lapse of said periods.

2. ID.; ID.; ID.; COMPANY-DESIGNATED PHYSICIAN MUST ARRIVE AT A DEFINITE ASSESSMENT OF THE SEAFARER'S FITNESS TO WORK OR PERMANENT DISABILITY WITHIN 120 OR 240 DAYS, OTHERWISE, SEAFARER SHALL BE DEEMED TOTALLY AND PERMANENTLY DISABLED.— In *Fil-Pride Shipping Company, Inc., et al. v. Balasta*, we held that the "company-designated physician must arrive at a definite assessment of the seafarer's fitness to work or permanent disability within the period of 120 or 240 days, pursuant to Article 192 (c)(1) of the Labor Code and Rule X, Section 2 of the Amended Rules on Employees Compensation. If he fails to do so and the seafarer's medical condition remains unresolved, the latter shall be deemed totally and permanently disabled." This definite assessment of the seaman's permanent disability must include the degree of his disability, as required by Section 20-B of the POEA-SEC, to wit: **SEC. 20. COMPENSATION AND BENEFITS** x x x B. COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS x x x 2. x x x However, if after repatriation, the seafarer still requires medical attention arising from said injury or illness, he shall be so provided at cost to the employer until such time he is declared fit **or the degree of his disability has been established by the company-designated physician**. 3. Upon sign-off from the vessel for medical treatment, the seafarer is entitled to sickness allowance x x x until he is declared fit to work **or the degree of permanent disability has been assessed by the company-designated physician** x x x. As we said in *Oriental Shipmanagement Co., Inc. v. Bastol*, the company-designated doctor must declare the seaman fit to work or assess the degree of his permanent disability.

3. CIVIL LAW; DAMAGES; ATTORNEY'S FEES; 10% OF THE AWARD PROPER WHEN PARTY FORCED TO LITIGATE TO PROTECT HIS VALID CLAIM.— [W]e grant Sibug attorney's fees of US$6,000 since he was forced to litigate to protect his valid claim. Where an employee is

forced to litigate and incur expenses to protect his right and interest, he is entitled to an award of attorney's fees equivalent to 10% of the award.

APPEARANCES OF COUNSEL

Del Rosario and Del Rosario for petitioners.
Dante L. Acorda for respondent.

D E C I S I O N

VILLARAMA, JR., *J.*:

Before the Court is a petition for review on *certiorari* assailing the Decision[1] dated July 29, 2011 and Resolution[2] dated February 14, 2012 of the Court of Appeals (CA) in CA-G.R. SP No. 110757. The CA ruled that respondent seaman Generoso E. Sibug is twice entitled to permanent and total disability benefits.

The antecedent facts follow:

Petitioners United Philippine Lines, Inc. and Holland America Line hired Sibug as waste handler on board the vessel M/S Volendam. On August 5, 2005, Sibug fell from a ladder while cleaning the silo sensor at a garbage room of the Volendam and injured his knee. He was repatriated and had anterior cruciate ligament (ACL) reconstruction surgery at the Manila Doctors Hospital. On January 19, 2006, he was declared fit to return to work from an orthopedic point of view.[3]

Sibug sought reemployment, passed the pre-employment medical examination, and was re-hired by petitioners in the same capacity for the vessel M/S Ryndam. On board Ryndam, Sibug met another accident while driving a forklift and injured his

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[1] *Rollo*, pp. 31-45. Penned by Associate Justice Magdangal M. De Leon with Associate Justices Mario V. Lopez and Socorro B. Inting concurring.

[2] *Id*. at 66-67.

[3] *Id*. at 32-33.

right hand and wrist. He was repatriated. He arrived in the Philippines on January 15, 2007,[4] and had surgery for his Ryndam injury.[5] On September 7, 2007, the company-designated doctor issued a medical report[6] that Sibug has a permanent but incomplete disability.[7] In an email[8] dated September 28, 2007, the company-designated doctor classified Sibug's disability from his Ryndam injury as a grade 10 disability.[9]

Sibug filed two complaints for disability benefits, illness allowance, damages and attorney's fees against petitioners, docketed as follows: (1) NLRC NCR OFW (M)-08-08711-07, which was anchored on his Volendam injury, and NLRC NCR OFW (M)-08-08708-07, which was anchored on his Ryndam injury.

In her Decision[10] dated May 14, 2008, the Labor Arbiter dismissed the Volendam case on the ground that Sibug was declared fit to work after his ACL reconstruction surgery. He also passed the pre-employment medical examination when he sought reemployment, was reemployed and was able to work again in Ryndam. As regards the Ryndam case, the Labor Arbiter awarded to Sibug US$10,075 which is the equivalent award for the grade 10 disability rating issued by the company-designated doctor. The *fallo* of the Labor Arbiter's Decision reads:

> WHEREFORE, in view of the foregoing, judgment is hereby rendered dismissing the claims in NLRC Case No. (M) NCR-08-08711-07. As regards the claims in NLRC NCR Case No. 08-08708-07, this Office holds that the complainant [Sibug] is entitled to disability benefits in the amount of US$10,075 which is the equivalent

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[4] CA *rollo*, p. 197.

[5] *Rollo*, p. 33.

[6] CA *rollo*, p. 216.

[7] *Rollo*, p. 116.

[8] CA *rollo*, p. 245.

[9] *Supra* note 7.

[10] CA *rollo*, pp. 189-194. Penned by Labor Arbiter Romelita N. Rioflorido.

of the grade "10" disability issued by the company-designated physician.

SO ORDERED.[11]

The National Labor Relations Commission (NLRC) reversed the Labor Arbiter's Decision. It ruled that Sibug is entitled to permanent and total disability benefit of US$60,000 for his Volendam injury and another US$60,000 for his Ryndam injury. It also awarded attorney's fees to Sibug. The *fallo* of the NLRC Decision[12] dated December 8, 2008 reads:

WHEREFORE, prescinding from the foregoing considerations the appeal is given due course. Accordingly, the Decision appealed from is **REVERSED** and **SET ASIDE** and a **NEW ONE ENTERED** —

1. For NLRC NCR Case (M) No. 08-08711-07 – The appellees [petitioners] are hereby ordered jointly and [severally] to pay complainant-appellant [Sibug] his total disability benefits (knee injury) amounting to US$60,000.00; and

2. For NLRC NCR Case (M) No. 08-08708-07 – The appellees [petitioners] are hereby ordered jointly and severally to pay the complainant-appellant [Sibug] his total disability benefit (right hand injury) amounting to US$60,000.00

3. Attorney's fees of 10% of the total monetary awards;

or an aggregate amount of US$132,000.00 or its Philippine Peso equivalent at the time of actual payment.

SO ORDERED.[13]

On reconsideration, the NLRC issued a Decision[14] dated May 29, 2009 which set aside its December 8, 2008 Decision and reinstated the Labor Arbiter's Decision, to wit:

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[11] *Id*. at 194.

[12] *Id*. at 88-107.

[13] *Id*. at 105-106.

[14] *Id*. at 73-79.

WHEREFORE, in the light of the foregoing, our Decision dated 8 December 2008 is hereby, SET ASIDE and the decision of the Labor Arbiter dated 14 May 2008 is hereby, REINSTATED, granting disability benefits in the amount of US$10,075.00 which is equivalent to grade "10" disability issued by the company designated physician.

SO ORDERED.[15]

Later, the NLRC denied Sibug's motion for reconsideration in its Resolution[16] dated July 31, 2009.

The CA set aside the NLRC Decision dated May 29, 2009 and reinstated the NLRC Decision dated December 8, 2008. The *fallo* of the assailed CA Decision reads:

WHEREFORE, premises considered, the instant petition is hereby **GRANTED** and the Decision dated May 29, 2009 is hereby **ANNULLED** and **SET ASIDE**. As prayed for, the NLRC *Decision* dated December 8, 2008 is hereby **REINSTATED**.

SO ORDERED.[17]

The CA ruled that Sibug was unable to perform his customary work for more than 120 days on account of his Volendam and Ryndam injuries. Thus, he is entitled to permanent and total disability benefit for both injuries.

On February 14, 2012, the CA denied petitioners' motion for reconsideration.

Hence, this petition.

Essentially, the issues for our resolution are as follows: (1) whether Sibug is entitled to permanent and total disability benefits for his Volendam and Ryndam injuries and (2) whether he is entitled to attorney's fees.

Petitioners argue that the CA erred in awarding disability benefit to Sibug by reason of his previous knee injury as he

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[15] *Id*. at 78.

[16] *Id*. at 54-55.

[17] *Rollo*, p. 44.

was already declared fit to work after recovery from said injury. Sibug was even able to regain employment and board their vessel Ryndam. They also argue that the CA erred in awarding maximum disability benefit to Sibug in the amount of US$60,000 for his hand injury as he was only assessed with a grade 10 disability equivalent to US$10,075 under the terms and conditions of the Philippine Overseas Employment Administration standard employment contract (POEA-SEC).[18]

In his comment, Sibug says that the assailed CA decision is correct and prays that the instant petition be denied for lack of merit.[19]

After our own review of the case, we find the petition partly meritorious. We rule that Sibug is not entitled to permanent and total disability benefit for his Volendam injury. But he is entitled to permanent and total disability benefit for his Ryndam injury and to attorney's fees.

Sibug is not entitled to permanent and total disability benefit for his Volendam injury since he became already fit to work again as a seaman. He even admitted in his position paper that he was declared fit to work.[20] He was also declared fit for sea service after his pre-employment medical examination when he sought reemployment with petitioners. The medical certificate[21] declaring Sibug fit for sea service even bears his signature. And he was able to work again in the same capacity as waste handler in Ryndam. On this point, the Labor Arbiter's ruling is amply supported by substantial evidence. On the other hand, the CA erred in ruling that Sibug is entitled to permanent and total disability benefit for the injury he suffered at the Volendam. The facts clearly show that he is not.

As regards his Ryndam injury, we agree with the CA that Sibug is entitled to permanent and total disability benefit

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[18] *Id.* at 8.

[19] *Id.* at 98-99.

[20] CA *rollo*, p. 196.

[21] *Id.* at 244.

amounting to US$60,000. Petitioners, the Labor Arbiter and the NLRC erred on this point. In *Millan v. Wallem Maritime Services, Inc.*,[22] we listed the following circumstances when a seaman may be allowed to pursue an action for permanent and total disability benefits:

(a) The company-designated physician failed to issue a declaration as to his fitness to engage in sea duty or disability even after the lapse of the 120-day period and there is no indication that further medical treatment would address his temporary total disability, hence, justify an extension of the period to 240 days;

(b) 240 days had lapsed without any certification issued by the company-designated physician;

(c) The company-designated physician declared that he is fit for sea duty within the 120-day or 240-day period, as the case may be, but his physician of choice and the doctor chosen under Section 20-B(3) of the POEA-SEC are of a contrary opinion;

(d) The company-designated physician acknowledged that he is partially permanently disabled but other doctors who he consulted, on his own and jointly with his employer, believed that his disability is not only permanent but total as well;

(e) The company-designated physician recognized that he is totally and permanently disabled but there is a dispute on the disability grading;

(f) The company-designated physician determined that his medical condition is not compensable or work-related under the POEA-SEC but his doctor-of-choice and the third doctor selected under Section 20-B(3) of the POEA-SEC found otherwise and declared him unfit to work;

(g) The company-designated physician declared him totally and permanently disabled but the employer refuses to pay him the corresponding benefits; and

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[22] G.R. No. 195168, November 12, 2012, 685 SCRA 225, 233-234, citing *C.F. Sharp Crew Management, Inc. v. Taok*, G.R. No. 193679, July 18, 2012, 677 SCRA 296, 315.

(h) The company-designated physician declared him partially and permanently disabled within the 120-day or 240-day period but he remains incapacitated to perform his usual sea duties after the lapse of said periods.

Paragraph (b) applies to Sibug's case. The company-designated doctor failed to issue a certification with a definite assessment of the degree of Sibug's disability for his Ryndam injury within 240 days.

In *Fil-Pride Shipping Company, Inc., et al. v. Balasta*,[23] we held that the "company-designated physician must arrive at a definite assessment of the seafarer's fitness to work or permanent disability within the period of 120 or 240 days, pursuant to Article 192 (c)(1) of the Labor Code and Rule X, Section 2 of the Amended Rules on Employees Compensation. If he fails to do so and the seafarer's medical condition remains unresolved, the latter shall be deemed totally and permanently disabled." This definite assessment of the seaman's permanent disability must include the degree of his disability, as required by Section 20-B of the POEA-SEC, to wit:

SEC. 20. COMPENSATION AND BENEFITS

x x x x x x x x x

B. COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS

x x x x x x x x x

2. x x x

However, if after repatriation, the seafarer still requires medical attention arising from said injury or illness, he shall be so provided at cost to the employer until such time he is declared fit **or the degree of his disability has been established by the company-designated physician**.

3. Upon sign-off from the vessel for medical treatment, the seafarer is entitled to sickness allowance x x x until he is declared fit to work **or the degree of permanent disability**

[23] G.R. No. 193047, March 3, 2014, pp. 1, 11.

> **has been assessed by the company-designated physician** x x x. (Emphasis and underscoring supplied.)

As we said in *Oriental Shipmanagement Co., Inc. v. Bastol*,[24] the company-designated doctor must declare the seaman fit to work or assess the degree of his permanent disability.

In this case, Sibug was repatriated and arrived in the country on January 15, 2007 after his Ryndam injury. He had surgery on his injured hand. On September 7, 2007, the company-designated doctor issued a medical report that Sibug has a permanent but incomplete disability. But this medical report failed to state the degree of Sibug's disability. Only in an email dated September 28, 2007, copy of which was attached as Annex 3 of petitioners' position paper, was Sibug's disability from his Ryndam injury classified as a grade 10 disability by the company-designated doctor. By that time, however, the 240-day extended period when the company-designated doctor must give the definite assessment of Sibug's disability had lapsed. From January 15, 2007 to September 28, 2007 is 256 days. Hence, Sibug's disability is already deemed permanent and total.

In *Magsaysay Maritime Corporation v. Lobusta*,[25] we also affirmed the award of US$60,000 as permanent and total disability benefit when after the lapse of 240 days there was no declaration of Lobusta's permanent disability.

In addition, we grant Sibug attorney's fees of US$6,000 since he was forced to litigate to protect his valid claim. Where an employee is forced to litigate and incur expenses to protect his right and interest, he is entitled to an award of attorney's fees equivalent to 10% of the award.[26]

WHEREFORE, we **GRANT** the petition and **SET ASIDE** the Decision dated July 29, 2011 and Resolution dated February

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[24] G.R. No. 186289, June 29, 2010, 622 SCRA 352, 382.

[25] G.R. No. 177578, January 25, 2012, 664 SCRA 134, 147-148.

[26] *Fil-Pride Shipping Company, Inc., et al. v. Balasta*, *supra* note 23, at 13.

14, 2012 of the Court of Appeals in CA-G.R. SP No. 110757. We render a new judgment and **ORDER** petitioners United Philippine Lines, Inc. and Holland America Line jointly and severally to pay respondent Generoso E. Sibug US$66,000 or its peso equivalent at the time of payment.

No pronouncement as to costs.

SO ORDERED.

Sereno, C.J. (Chairperson), Leonardo-de Castro, Bersamin, and *Reyes, JJ.*, concur.

FIRST DIVISION

[G.R. No. 202704. April 2, 2014]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JOEL ABAT *y* COMETA,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; GUIDELINES.— When this Court is faced with the issue of credibility of witnesses, it follows a set of guidelines as established in jurisprudence, *viz*: ***First***, the Court gives the highest respect to the RTC's evaluation of the testimony of the witnesses, considering its unique position in directly observing the demeanor of a witness on the stand. From its vantage point, the trial court is in the best position to determine the truthfulness of witnesses. ***Second***, absent any substantial reason which would justify the reversal of the RTC's assessments and conclusions, the reviewing court is generally bound by the lower court's findings, particularly when no significant facts and circumstances, affecting the outcome of the case, are shown to have been overlooked or disregarded. ***And third***,

the rule is even more stringently applied if the CA concurred with the RTC.

2. CRIMINAL LAW; RAPE; ELEMENTS; PREGNANCY, NOT INCLUDED AND IMMATERIAL.— Abat argues that if it were true that he raped AAA in September 2001, then the baby girl AAA gave birth to in April 2002, would have been born prematurely. Since the baby appeared to be healthy and did not need any medical attention when she was born, she could not have possibly been the result of the alleged rape in September 2001. There is no merit in Abat's contention. x x x In *People v. Malapo*, this Court [ruled:] x x x **[T]he impregnation of a woman is not an element of rape. x x x For the conviction of an accused, it is sufficient that the prosecution establish beyond reasonable doubt that he had carnal knowledge of the offended party and that he had committed such act under any of the circumstances enumerated [under Art. 335 of the Revised Penal Code].**

3. REMEDIAL LAW; EVIDENCE; DEFENSE OF ILL MOTIVE AND DENIAL; NOT APPRECIATED.— Abat's attempt to escape liability by denying the charge against him and coupling it with the imputation of ill motive against AAA's parents must be ignored. "Motives such as resentment, hatred or revenge have never swayed this Court from giving full credence to the testimony of a minor rape victim." More so in this case, where the attribution of the improper motive is against AAA's parents and not her personally. x x x Furthermore, this Court has never favorably looked upon the defense of denial, which constitutes self-serving negative evidence that cannot be accorded greater evidentiary weight than the positive declaration of a credible witness.

4. CRIMINAL LAW; QUALIFIED RAPE; PENALTY AND DAMAGES.— Since Abat admittedly was AAA's uncle, being the half-brother of her father, Article 266-B of the Revised Penal Code proves to be of relevance, to wit: ART. 266-B. *Penalties*. – Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua*. x x x The death penalty shall also be imposed if the crime of rape is committed with any of the following aggravating/qualifying circumstances: 1) When the victim is under eighteen (18) years of age and the offender is a parent, ascendant, stepparent, guardian, relative by consanguinity or affinity within the third

civil degree, or the common-law spouse of the parent of the victim. As both the minority of AAA and her relationship to Abat were sufficiently alleged in the Information and proved by the prosecution, Abat should be convicted of qualified rape under Article 266-B of the Revised Penal Code. However, in view of the provisions of Republic Act No. 9346, which prohibits the imposition of the death penalty, the penalty of *reclusion perpetua* without eligibility for parole, is the proper penalty to be imposed. This Court affirms the awards of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱30,000.00 as exemplary damages, as increased by the Court of Appeals. Pursuant to prevailing jurisprudence, the indemnity and damages awarded are further subject to interest at the rate of six percent (6%) per annum from the date of finality of this judgment until fully paid.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

Accused-appellant Joel Abat *y* Cometa (Abat) is now before Us on review after the Court of Appeals, in its February 27, 2012 Decision[1] in CA-G.R. CR.-H.C. No. 04340, affirmed with modification as to damages the September 8, 2009 Decision[2] of the Regional Trial Court (RTC) of the City of Calapan, Oriental Mindoro, Branch 40, in Criminal Case No. C-6587. The RTC found Abat guilty beyond reasonable doubt of the crime of rape under Article 266-A of the Revised Penal Code,[3] and sentenced

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[1] *Rollo*, pp. 2-23; penned by Associate Justice Leoncia R. Dimagiba with Associate Justices Hakim S. Abdulwahid and Marlene Gonzales-Sison, concurring.

[2] CA *rollo*, pp. 16-23.

[3] As amended by Republic Act No. 8353.

him to suffer the penalty of *reclusión perpetua* with all the accessory penalties provided for by law.[4]

On November 15, 2001, an Information[5] was filed before the RTC, charging Abat with the crime of Rape allegedly committed as follows:

> That on or about the 22nd day of September 2001, in Barangay San Narciso, Municipality of Victoria, Province of Oriental Mindoro, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, motivated by lust and lewd desire, and by means of force and intimidation, willfully, unlawfully and feloniously did lie, and succeeded in having carnal knowledge of one [AAA[6]], a fifteen (15)[-] year-old girl, his niece, against her will and without her consent, to the damage and prejudice of the latter.
>
> Contrary to Article 335 in relation to R.A. 7659 & 8353.

Abat pleaded not guilty to the charge upon his arraignment on January 30, 2002.[7] The pre-trial conference was held and terminated on February 12, 2002,[8] after which, trial on the merits ensued.

The facts of the case, as adopted by the Court of Appeals, are as follows:

Version of the Prosecution

On [September] 22, 2001, around [eight] o'clock in the evening, AAA was home with her parents and siblings. [Abat,] (an uncle of

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[4] CA *rollo*, p. 23.

[5] Records, pp. 1-2.

[6] Under Republic Act No. 9262 also known as "Anti-Violence Against Women and Their Children Act of 2004" and its implementing rules, the real name of the victim and those of her immediate family members are withheld and fictitious initials are instead used to protect the victim's privacy.

[7] Records, p. 28.

[8] *Id*. at 30.

AAA, being the half[-]brother of AAA's father), with the permission of AAA's parents, brought AAA with him to the poblacion to buy medicine.

The two proceeded to the poblacion on board a tricycle driven by [Abat]. There, [Abat] left AAA in the tricycle and proceeded to talk with his fellow tricycle drivers. Soon, AAA told [Abat] that she wanted to go home. Instead of taking her home, [Abat] drove the vehicle to Malayas Bridge.

Upon reaching Malayas Bridge, [Abat] forced AAA to jump from the bridge. Frightened, AAA ran towards the direction of the poblacion and shouted for help. [Abat] chased AAA and forced her to board the tricycle. Then, he drove the tricycle to Barangay Malabo.

Upon reaching Barangay Malabo, [Abat] brought AAA to her grandfather's nipa hut. [Abat] undressed himself then laid AAA down on a bamboo bed. He went on top of her and started to remove her shorts and underwear. AAA tried to fight [Abat] and slapped him. Because of this, [Abat] boxed AAA on her thighs and continued to undress her. AAA tried to push [Abat] away by hitting him with fist blows but her efforts were in vain. [Abat] inserted his penis into AAA's vagina. AAA again struggled and tried to push [Abat] away but he threatened to kill her and her family if she would tell anybody about the "act." [Abat] then made a push and pull movement which caused AAA to feel pain. After which, [Abat] ejaculated.

AAA was not able to go home that fateful night. [Abat] guarded her as she cried the whole night.

The following morning, around [ten] o'clock in the morning, [Abat] brought AAA home. When AAA's parents asked her where she slept, [Abat] replied that AAA slept in the house of her grandfather in Barangay San Narciso. Afterwards, [Abat] left.

AAA kept silent on the matter because she was afraid that [Abat] will make good his threat. However, [Abat] frequented the school where AAA was studying. On November 12, 2001, [Abat] tried to force her to go to his house. Thus, in the evening, AAA informed her parents about the rape incident and they went to Victoria Police Station to lodge a complaint against [Abat].

On November 14, 2001, Dr. Virginia R. Valdez, Municipal Health Officer of Victoria Oriental Mindoro examined AAA. Dr. Valdez issued a Medical Certificate which stated that AAA has healed

hymenal lacerations at 2 o'clock and 7 o'clock positions which could be possibly caused by the insertion of a hard object like an erect penis, medical instrumentation, exercise, horseback riding, masturbation or by falling down. According to Dr. Valdez, the hymenal lacerations could have been sustained by the victim for several days or months prior to her examination.

Because of rape, AAA, on April 24, 2002, gave birth to a baby girl.[9]

Version of the Defense

On the other hand, [Abat] denied that he had sexual intercourse with AAA on September 22, 2001. He declared that on July 20, 2001, he had sexual intercourse with AAA; that sometime on May 25, 2001, AAA slept in his house after attending a dance party in their *barangay* and AAA told him that they had sex the previous night; that he was surprised when he saw the blanket stained with blood; that out of confusion, he threw it in the river. They secretly kept the matter but eventually AAA started asking [for] money and other things from him.

He and AAA considered themselves as lovers. She frequently visited him during Saturdays and Sundays. AAA's parents filed a case against him when they discovered she was pregnant[.][10]

[And] because of a misunderstanding between AAA's parents and his mother regarding [a piece of] property.[11]

Ruling of the RTC

Having found Abat guilty beyond reasonable doubt of the crime of Rape, the RTC on September 8, 2009, promulgated its Decision, the dispositive portion of which reads:

ACCORDINGLY, this Court finds herein accused Joel Abat *y* Cometa guilty beyond reasonable doubt as principal of the crime of Rape punishable under Article 266-A of the Revised Penal Code and said accused is hereby sentenced to suffer the penalty of *Reclusion*

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[9] *Rollo*, pp. 4-6.

[10] *Id.* at 6-7.

[11] CA *rollo*, p. 20.

Perpetua with all the accessory penalties as provided for by law. The accused is hereby ordered to pay the private complainant the amount of ₱75,000.00 as civil indemnity and the amount of ₱50,000.00 as moral and exemplary damages.[12]

According AAA's testimony full faith and credit, the RTC was not convinced with Abat's defense of denial and ill motive. It said that it was highly unlikely that AAA, his own niece would falsely charge him of such a serious crime and go public with her ordeal just because of a misunderstanding between him and her mother over a property. Moreover, the RTC found it striking that nobody testified in his behalf, including his own family.[13]

Challenging his conviction, Abat appealed to the Court of Appeals,[14] pleading for the reversal of his conviction on the ground of reasonable doubt.

Ruling of the Court of Appeals

The Court of Appeals, however, found no error committed by the RTC, and affirmed Abat's conviction, modifying only the award of damages, to wit:

WHEREFORE, premises considered, the assailed Decision is hereby **AFFIRMED** with **MODIFICATION**. As thus modified, accused-appellant is ordered to pay Php75,000.00 as moral damages and Php30,000.00 as exemplary damages.[15]

The Court of Appeals declared that the prosecution was able to establish all the elements of rape, thus resulting in Abat's conviction. It agreed with the RTC that AAA's credible testimony was enough to prove Abat's guilt beyond reasonable doubt.[16]

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[12] *Id*. at 23.

[13] *Id*. at 22.

[14] *Id*. at 24.

[15] *Rollo*, p. 23.

[16] *Id*. at 8-14.

Issue

Aggrieved, Abat elevated[17] his case to this Court, with the same assignment of error he presented before the Court of Appeals,[18] *viz*:

THE COURT *A QUO* GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE PROSECUTION'S FAILURE TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.[19]

Abat is alleging that he and AAA had a romantic relationship, which eventually turned sour when AAA started asking for money from him all the time. In support of this claim, he cites the birth date of the baby, who was supposedly the product of his crime. Abat says that if the baby was born in April 2002, then his version of the story, that they had consensual sex in July 2001, is more credible than her story of rape in September 2001; otherwise, the baby would have been premature.[20]

Ruling of this Court

We find no reason to reverse Abat's conviction.

In essence, Abat is questioning the lower courts' reliance on AAA's credibility, which led to his conviction.

Credibility of AAA

When this Court is faced with the issue of credibility of witnesses, it follows a set of guidelines as established in jurisprudence, *viz*:

First, the Court gives the highest respect to the RTC's evaluation of the testimony of the witnesses, considering its unique position in directly observing the demeanor of a witness on the stand. From its vantage point, the trial court is in the best position to determine the truthfulness of witnesses.

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[17] CA *rollo*, pp. 122-124.

[18] *Rollo*, pp. 38-41.

[19] CA *rollo*, p. 35.

[20] *Id*. at 41-43.

Second, absent any substantial reason which would justify the reversal of the RTC's assessments and conclusions, the reviewing court is generally bound by the lower court's findings, particularly when no significant facts and circumstances, affecting the outcome of the case, are shown to have been overlooked or disregarded.

And third, the rule is even more stringently applied if the CA concurred with the RTC.[21]

This Court has time and again explained why the determination of a witness' credibility appropriately pertains to the trial court, to wit:

It is well settled that the evaluation of the credibility of witnesses and their testimonies is a matter best undertaken by the trial court because of its unique opportunity to observe the witnesses firsthand and to note their demeanor, conduct, and attitude under grilling examination. These are important in determining the truthfulness of witnesses and in unearthing the truth, especially in the face of conflicting testimonies. For, indeed, the emphasis, gesture, and inflection of the voice are potent aids in ascertaining the witness' credibility, and the trial court has the opportunity and can take advantage of these aids. These cannot be incorporated in the record so that all that the appellate court can see are the cold words of the witness contained in transcript of testimonies with the risk that some of what the witness actually said may have been lost in the process of transcribing. As correctly stated by an American court, "[t]here is an inherent impossibility of determining with any degree of accuracy what credit is justly due to a witness from merely reading the words spoken by him, even if there were no doubt as to the identity of the words. However artful a corrupt witness may be, there is generally, under the pressure of a skillful cross-examination, something in his manner or bearing on the stand that betrays him, and thereby destroys the force of his testimony. Many of the real tests of truth by which the artful witness is exposed in the very nature of things cannot be transcribed upon the record, and hence they can never be considered by the appellate court."[22]

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[21] *People v. Banzuela*, G.R. No. 202060, December 11, 2013.

[22] *Id.*, citing *People v. Sapigao, Jr.*, 614 Phil. 589, 599 (2009).

In the case at bar, both the RTC and the Court of Appeals found AAA's testimony to be straightforward and credible.[23] This Court, thus, finds no reason to disturb the lower courts' assessment of AAA's testimony.

Rape and Pregnancy

Abat argues that if it were true that he raped AAA in September 2001, then the baby girl AAA gave birth to in April 2002, would have been born prematurely. Since the baby appeared to be healthy and did not need any medical attention when she was born, she could not have possibly been the result of the alleged rape in September 2001.

There is no merit in Abat's contention. Reiterating the pronouncements in *People v. Adora*,[24] this Court, in *People v. Sta. Ana*,[25] said:

"[A]uthorities in forensic medicine agree that the determination of the exact date of fertilization is problematic. The exact date thereof is unknown; thus, the difficulty in determining the actual normal duration of pregnancy." Citing a Filipino authority, the Court further elucidated: "The average duration of pregnancy is 270 to 280 days from the onset of the last menstruation. *There is, however, no means of determining it with certainty*. Evidence derived from pregnancy following a single coitus is trustworthy, but inasmuch as some authorities consider more than two weeks as the life span of the spermatozoa in the vaginal canal, it is hard to ascertain the exact date of fertilization. *There is no synchrony between coitus and fertilization*." (Citations omitted).

In *People v. Malapo*,[26] this Court was faced with a similar issue when the accused therein, Malapo, questioned his conviction for rape based on the fact that the baby boy, who was supposedly the fruit of the rape he allegedly perpetrated on September 15,

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[23] *Rollo*, p. 13.

[24] 341 Phil. 441, 458 (1997).

[25] 353 Phil. 388, 413-414 (1998).

[26] 356 Phil. 75, 81-82 (1998).

1991, was only eight months and three days old when he was born on May 18, 1992, contrary to the Medical Certificate submitted in evidence, which states that the baby was full term when it was delivered.

This Court upheld Malapo's conviction and explained its position as follows:

> A textbook on pediatrics states that "Infants delivered before the thirty-seventh week of gestation with a birth weight of less than 2,500 grams (American) or 2,275 grams (Filipino) are considered premature." An infant can therefore be considered a full-term baby if it weighs more than 2,275 grams even if it is born before the thirty-seventh week which is less than 9.3 months. Since according to the medical certificate (Exh. 1) Amalia's baby weighed 2.4 kilograms or 2,400 grams, it was a full-term baby even if it was born before the normal gestation period.
>
> Article 166 of the Family Code provides:
>
> > Legitimacy of a child may be impugned only on the following grounds:
> >
> > (1) That it was physically impossible for the husband to have sexual intercourse with his wife within the first 120 days of the 300 days which immediately preceded the birth of the child because of:
> >
> > (a) the physical incapacity of the husband to have sexual intercourse with his wife;
> >
> > (b) the fact that the husband and wife were living separately in such a way that sexual intercourse was not possible; or
> >
> > (c) serious illness of the husband, which absolutely prevented sexual intercourse;
> >
> > (2) That it is proved that for biological or other scientific reasons, the child could not have been that of the husband, except in the instance *provided* in the second paragraph of Article 164; . . .
>
> In the case at bar, it can be inferred that conception occurred at or about the time that accused-appellant is alleged to have committed the crime, *i.e.*, within 120 days from the commission of the offense

in September 1991. Pursuant to Art. 166 of the Family Code, accused-appellant can overcome the presumption that Amalia's child was begotten as a result of her having been raped in September 1991 only if he can show either that it was physically impossible for him to have sexual intercourse because of impotence or serious illness which absolutely prevents him from having sexual intercourse or that Amalia had sexual intercourse with another man. However, accused-appellant has not shown either of these.

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In any event, the impregnation of a woman is not an element of rape. Proof that the child was fathered by another man does not show that accused-appellant is not guilty, considering the positive testimony of Amalia that accused-appellant had abused her. As held in *People v. Alib*:

> Under Article 335 of the Revised Penal Code, rape is committed by having carnal knowledge of a woman under any of the following circumstances:
>
> (1) By using force or intimidation;
>
> (2) When the woman is deprived of reason or otherwise unconscious; and
>
> (3) When the woman is under twelve years of age, even though neither of the circumstances mentioned in the two next preceding paragraphs shall be present.
>
> **It is therefore quite clear that the pregnancy of the victim is not required. For the conviction of an accused, it is sufficient that the prosecution establish beyond reasonable doubt that he had carnal knowledge of the offended party and that he had committed such act under any of the circumstances enumerated above.** Carnal knowledge is defined as the act of a man having sexual bodily connections with a woman[.] (Citations omitted, emphases supplied).

Having stressed that pregnancy is not an element of the crime of rape, AAA's pregnancy therefore is totally immaterial to the resolution of this case.[27]

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[27] *People v. Sta. Ana*, *supra* note 25 at 414.

Defenses of Denial and Ill Motive

Abat's attempt to escape liability by denying the charge against him and coupling it with the imputation of ill motive against AAA's parents must be ignored. "Motives such as resentment, hatred or revenge have never swayed this Court from giving full credence to the testimony of a minor rape victim."[28] More so in this case, where the attribution of the improper motive is against AAA's parents and not her personally. We agree with the RTC when it said:

> [T]he allegations of the accused that the private complainant might have filed the instant case against him only because of a misunderstanding that ensued between the parents of the private complainant and his mother regarding their property is too flimsy and insignificant for [AAA] to falsely charge him of so serious a crime and to publicly disclose that she had been raped and then undergo the concomitant humiliation, anxiety and exposure to a public trial. It is highly inconceivable that a 15[-]year[-]old girl like [AAA] and who is the niece of the accused would falsely charge him with a serious crime of Rape if what she testified in Court were not the plain truth. Without vacillation, the private complainant submitted herself for medical and genital examination and was confirmed by the doctor who examined her that the private complainant sustained healed hymenal lacerations at 2 and 7 o'clock positions which may be caused by the insertion of a hard object like an erect penis.
>
> It is striking to note that nobody corroborated the testimonies of the accused denying the indictment against him which this Court concluded that even his family and loved ones had abandoned him during the times of his needs because they probably believed that the accusation of the private complainant against him is true.[29]

Furthermore, this Court has never favorably looked upon the defense of denial, which constitutes self-serving negative evidence that cannot be accorded greater evidentiary weight

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[28] *People v. Mangitngit*, 533 Phil. 837, 852 (2006).

[29] CA *rollo*, p. 22.

than the positive declaration of a credible witness.[30] To elucidate on the point, this Court, in *People v. Espinosa*,[31] held that:

> It is well-settled that denial, if unsubstantiated by clear and convincing evidence, is a self-serving assertion that deserves no weight in law. Denial cannot prevail over the positive, candid and categorical testimony of the complainant, and as between the positive declaration of the complainant and the negative statement of the appellant, the former deserves more credence. (Citations omitted.)

Penalty and Damages

Since Abat admittedly was AAA's uncle, being the half-brother of her father, Article 266-B of the Revised Penal Code proves to be of relevance, to wit:

> ART. 266-B. *Penalties*.— Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua*.
>
> x x x x x x x x x
>
> The death penalty shall also be imposed if the crime of rape is committed with any of the following aggravating/qualifying circumstances:
>
> 1) When the victim is under eighteen (18) years of age and the offender is a parent, ascendant, stepparent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim.

As both the minority of AAA and her relationship to Abat were sufficiently alleged in the Information and proved by the prosecution, Abat should be convicted of qualified rape under Article 266-B of the Revised Penal Code. However, in view of the provisions of Republic Act No. 9346, which prohibits the imposition of the death penalty, the penalty of *reclusion perpetua*[32] without eligibility for parole,[33] is the proper penalty to be imposed.

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[30] *People v. Vergara*, G.R. No. 199226, January 15, 2014.

[31] 476 Phil. 42, 62 (2004).

[32] Republic Act No. 9346, Section 2.

[33] *Id.*, Section 3.

This Court affirms the awards of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱30,000.00 as exemplary damages, as increased by the Court of Appeals.[34] Pursuant to prevailing jurisprudence,[35] the indemnity and damages awarded are further subject to interest at the rate of six percent (6%) per annum from the date of finality of this judgment until fully paid.

WHEREFORE, premises considered, the decision of the Court of Appeals in **CA-G.R. CR.-H.C. No. 04340**, is hereby **AFFIRMED with MODIFICATION**. Accused-appellant JOEL ABAT *y* COMETA is found **GUILTY** beyond reasonable doubt of the crime of Qualified Rape, and sentenced to *reclusion perpetua*, in lieu of death, without eligibility for parole. He is ordered to pay the victim AAA, Seventy-Five Thousand Pesos (₱75,000.00) as civil indemnity, Seventy-Five Thousand Pesos (₱75,000.00) as moral damages, and Thirty Thousand Pesos (₱30,000.00) as exemplary damages, ALL with interest at the rate of 6% per annum from the date of finality of this judgment. No costs.

SO ORDERED.

Sereno, C.J. (Chairperson), Bersamin, Villarama, Jr., and *Reyes, JJ.,* concur.

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[34] *People v. Laurino*, G.R. No. 199264, October 24, 2012, 684 SCRA 612, 621.

[35] *Sison v. People*, G.R. No. 187229, February 22, 2012, 666 SCRA 645, 667.

SECOND DIVISION

[G.R. No. 204761. April 2, 2014

EMERITUS SECURITY AND MAINTENANCE SYSTEMS, INC., *petitioner, vs.* **JANRIE C. DAILIG,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR CODE; TERMINATION OF EMPLOYMENT; CONSTRUCTIVE DISMISSAL; FLOATING STATUS OF A SECURITY GUARD FOR MORE THAN SIX MONTHS CONSTITUTES CONSTRUCTIVE DISMISSAL.— The Court agrees with the ruling of the Labor Arbiter, NLRC and Court of Appeals that a floating status of a security guard, such as respondent, for more than six months constitutes constructive dismissal.

2. ID.; ID.; NATIONAL LABOR RELATIONS COMMISSION (NLRC); FACTUAL FINDINGS THEREOF, IF SUPPORTED BY SUBSTANTIAL EVIDENCE, ARE RESPECTED ON APPEAL.— Factual findings of quasi-judicial bodies like the NLRC, if supported by substantial evidence, are accorded respect and even finality by this Court, more so when they coincide with those of the Labor Arbiter. Such factual findings are given more weight when the same are affirmed by the Court of Appeals.

3. ID.; ID.; TERMINATION OF EMPLOYMENT; ILLEGAL DISMISSAL; REINSTATEMENT OR AWARD OF SEPARATION PAY IN LIEU THEREOF.— Article 279 of the Labor Code of the Philippines mandates the reinstatement of an illegally dismissed employee, to wit: Security of Tenure. – x x x An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full back wages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement. Thus, reinstatement is the general rule, while the award of separation pay is the exception. The circumstances warranting the grant of separation pay, in lieu of reinstatement, are laid down by

> the Court in *Globe-Mackay Cable and Radio Corporation v. National Labor Relations Commission*, thus: Over time, the following reasons have been advanced by the Court for denying reinstatement under the facts of the case and the law applicable thereto; that reinstatement can no longer be effected in view of the long passage of time (22 years of litigation) or because of the realities of the situation; or that it would be 'inimical to the employer's interest;' or that reinstatement may no longer be feasible; or, that it will not serve the best interests of the parties involved; or that the company would be prejudiced by the workers' continued employment; or that it will not serve any prudent purpose as when supervening facts have transpired which make execution on that score unjust or inequitable or, to an increasing extent, due to the resultant atmosphere of 'antipathy and antagonism' or 'strained relations' or 'irretrievable estrangement' between the employer and the employee.

APPEARANCES OF COUNSEL

Edward P. Buenaflor for petitioner.
Public Attorney's Office for respondent.

R E S O L U T I O N

CARPIO, *J.*:

The Case

This petition for review[1] assails the 25 May 2012 Decision[2] and 11 December 2012 Resolution[3] of the Court of Appeals in CA-G.R. SP No. 111904. Affirming with modification the decision of the National Labor Relations Commission (NLRC), the Court of Appeals found respondent Janrie C. Dailig (respondent) illegally dismissed by petitioner Emeritus Security and Maintenance Systems, Inc. (petitioner) and ordered the

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[1] Under Rule 45 of the Rules of Court.

[2] *Rollo*, pp. 37-48. Penned by Associate Justice Noel G. Tijam with Associate Justices Normandie B. Pizarro and Danton Q. Bueser concurring.

[3] *Id.* at 49-51.

payment of separation pay, instead of reinstatement, and backwages.

The Facts

In August 2000, petitioner hired respondent as one of its security guards. During his employment, respondent was assigned to petitioner's various clients, the last of which was Panasonic in Calamba, Laguna starting 16 December 2004.

On 10 December 2005, respondent was relieved from his post.

On 27 January 2006, respondent filed a complaint for underpayment of wages, non-payment of legal and special holiday pay, permium pay for rest day and underpayment of ECOLA before the Department of Labor and Employment, National Capital Region. The hearing officer recommended the dismissal of the complaint since the claim were already paid.

On 16 June 2006, respondent filed a complaint for illegal dismissal and payment of separation pay against petitioner before the Conciliation and Mediation Center of the NLRC. On 14 July 2006, respondent filed another complaint for illegal dismissal, underpayment of salaries and non-payment of full backwages before the NLRC.

Respondent claimed that on various dated in December 2005 and from January to May 2006,[4] he went to petitioner's office to follow-up his next assignment. After more than six months since his last assignment, still respondent was not given a new assignment. Respondent argued that if an employee is on floating status for more than six months, such employee is deemed illegally dismissed.

Petitioner denied dismissing respondent. Petitioner admitted that it relieved respondent from his last assignment on 10 December 2005; however, petitioner required respondent to report to the head office within 48 hours from receipt of the order of relief. Respondent allegedly failed to comply. Petitioner claimed

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[4] 12, 16, 22 December 2005; 10, 30 January 2006; 15 February 2006; 16 March 2006; 11 April 2006; and 15 May 2006.

that on 27 January 2006 it sent respondent a notice to his last known address requiring him to report to the head office within 72 hours from receipt of the said notice. Petitioner further alleged that it had informed respondent that he had been absent without official leave of the month of January 2006, and that his failure to report within 72 hours from receipt of the notice would mean that he was no longer interested to continue his employment.

Petitioner also claimed that there was no showing that respondent was prevented from returning to his work and that it had consistently manifested its willingness to reinstate him to his former position. In addition, the fact that there was no terminatin letter sent to respondent purportedly proved that respondent was not dismissed.

On 5 December 2007, the Labor Arbiter rendered a Decision, disposing of the case as follows:

> WHEREFORE, premises considered, complainant is hereby declared to have been illegally dismissed. Accordingly, respondent is hereby ordered to reinstate complainant and to pay him backwages from the time his compensation was withheld by reason of his illegal dismissal until actual reinstatement. His claim for underpayment is hereby denied for lack of merit. The totality of complainant's monetary award as computed by the Computation and Examination Unit is hereby adopted as integral part of this Decision.
>
> SO ORDERED.[5]

The Computation of the monetary award is as follows:

BACKWAGES from 12/10/05 TO 12/5/07

Basic Pay		
P7,590/mo. x 23.86 mos.	=	₱180,381.60
13th month pay		
P180,381.60/12	=	15,031.80
SIL Pay		
P7,560/30x 5 days x 23.86/12	=	2,505.30
TOTAL		₱197,918.70[6]

[5] *Rollo,* p. 40.

[6] *Id*.

Petitioner appealed before the NLRC, which dismissed the appeal for lack of merit. Petitioner moved for reconsideration, which the NLRC denied. The NLRC, however, pointed out that the computation of respondent's award of full backwages should be reckoned from 10 December 2005.

On appeal with the Court of Appeals, petitioner argued that there was abandonment on respondent's part when he refused to report for work despite notice. Thus, there was no illegal dismissal to speak of.

The Ruling of the Court of Appeals

The Court of Appeals affirmed the finding of the Labor Arbiter and the NLRC that respondent was illegally dismissed by petitioner. However, the Court of Appeals set aside the Labor Arbiter and the NLRC's reinstatment order. Instead, the Court of Appeals ordered the payment of separation pay, invoking the doctrine of strained relations between the parties.

The dispositive portion of the decision reads:

> WHEREFORE, the instant petition for certiorari is DISMISSED. The Decision and Resolution of the NLRC-First Division, dated October 21, 2008 and October 19, 2009, respectively, in NLRC Case No. RAB-IV-07-23165-06-L NLRC LAC No. 03-000954-08, are AFFIRMED with MODIFICATION, in that, petitioner is ORDERED to pay private respondent Janrie C. Dailig (a) separation pay in the amount equivalent to to one 91) month pay for every year of service and (b) backwages, computed from the time compensation was withheld from him when he was unjustly terminated, uo to the time of payment thereof. For this purpose, the records of this case are hereby REMANDED to the Labor Arbiter for proper computation of said awards in view of this Decision. Costs against petitioner.
>
> SO ORDERED.[7]

The Issues

The issues are (1) whether respondent was illegally dismissed by petitioner (2) if he was, whether respondent is entitled to separation pay, instead or reinstatement.

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[7] *Id*. at 47.

The Ruling of the Court

The Court affirms the finding of illegal dismissal of the Labor Arbiter, NLRC, and Court of Appeals. However, the Court sets aside the Court of Appeals' award of separation pay in favor of respondent, and reinstates the Labor Arbiter's reinstatement order.

On whether respondet was illegally dismissed

Petitioner admits relieving respondent from his post as security guard on 10 December 2005. There is also no dispute that respondent remained on floating status at the time he filed his complaint for illegal dismissal on 16 June 2006. In other words, respondent was on floating status from 10 December 2005 to 16 June 2006 or more than six months. Petitioner's allegation of sending respondent a notice sometime in January 2006, requiring him to report for work, is unsubstantiated, and thus, self-serving.

The Court agrees with the ruling of the Labor Arbiter, NLRC and Court of Appeals that a floating status of a security guard, such as respondent, for more than six months constitutes constructive dismissal. In *National Security and Allied Services, Inc. v. Valderama*,[8] the Court held:

> x x x the temporary inactivity or "floating status" of security guards should continue only for six months. Otherwise, the security agency concerned could be liable for constructive dismissal. The failure of petitioner to give respondent a work assignment beyond the reasonable six-month period makes it liable for constructive dismissal. x x x.[9]

Further, the Court notes that the Labor Arbiter, NLRC, and Court of Appeals unaminously found that respondent was illegally dismissed by petitioner. Factual findings of quasi-judicial bodies

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[8] G.R. No. 186614, 23 February 2011, 644 SCRA 299, 310-311.

[9] *Id*. See *People's Security, Inc. v. National Labor Relations Commission*, G.R. No. 96451, 8 September 1993, 226 SCRA 146, 152-153; *Mobile Protective & Detective Agency v. Ompad*, G.R. No. 159195, 9 May 2005, 458 SCRA 308, 323.

like the NLRC, if supported by substantial evidence, are accorded respect and even finality by this Court, more so when they coincide with those of the Labor Arbiter.[10] Such factual findings are given more weight when the same are affirmed by the Court of Appeals.[11] The Court finds no reason to depart from the foregoing rule.

On wheter respondent is entitled to separation pay

Article 279 of the Labor Code of the Philippines mandates the reinstatement of an illegally dismissed employee, to wit:

> *Security of Tenure*. — x x x An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full back wages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement.

Thus, reinstatement is the general rule, while the award of separation pay is the exception. The circumstances warranting the grant of separation pay, in lieu of reinstatement, are laid down by the Court in *Globe-Mackay Cable and Radio Corporation v. National Labor Relations Commission*,[12] thus:

> Over time, the following reasons have been advanced by the Court for denying reinstatement under the facts of the case and the law applicable thereto; that reinstatement can no longer be effected in view of the long passage of time (22 years of litigation) or because of the realities that the situation; or that it would be 'inimical to the employer's interest;' or that reinstatement may no longer be feasible; or, that it will not serve the best interests of the parties involved; or that the company would be prejudiced by the workers' continued employment; or that it will not serve any prudent purpose as when supervening facts have transpired which extent, due to the resultant atmosphere of 'antipathy and antagonism, or 'strained

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[10] *Bank of Lubao, Inc. Manabat,* G.R. No. 188722, 1 February 2012, 664 SCRA 772, 779.

[11] *Id.*

[12] G.R. No. 82511, 3 March 1992, 206 SCRA 701, 709-710.

relations' or 'irretrievable estrangement' between the employer and the employee.

In this case, petitioner claims that it complied with the reinstatement order of the Labor Arbiter. On 23 January 2008, petitioner sent respondent a notice informing him of the Labor Arbiter's decision to reintate him. Accordingly, in February 2008, respondent was assigned by petitioner to Canlubang Sugar Estate, Inc. in Canlubang, Laguna, and to various posts thereafter. At the time of the filing of the petition, respondent was assigned by petitioner to MD Distripark Manila, Inc. in Biñan, Laguna.

Respondent admits receiving a reinstatement notice from petitioner. Thereafter, respondent was assigned to one of petitioner's clients. However, respondent points out that he was not reinstated by petitioner Emeritus Security And Maintenance Systems, Inc. but was employed by another company, Emme Security and Maintenance Systems, Inc. (Emme). Thus, according to respondent, he was not reinstated at all.

Petitioner counters that Emeritus and Emme are sister companies with the same Board of Directors and officers, arguing that Emeritus and Emme are in effect one and the same corporation.

Considering petitioner's undisputed claim that Emeritus and Emme are one and the same, there is no basis in respondent's allegation that he was not reinstated to his previous employment. Besides, respondent assails the corporate personalities of Emeritus and Emme only in his Comment filed before this Court. Further, respondent did not appeal the Labor Arbiter's reinstatement order.

Contrary to the Court of Appeals' ruling, there is nothing in the records showing any strained relations between the parties to warrant the award of separation pay. There is neither allegation nor proof that such animosity existed between petitioner and respondent. In fact, petitioner complied with the Labor Arbiter's reinstatement order.

Considering that (1) petitioner reinstated respondent in compliance with the Labor Arbiter's decision, and (2) there is

no ground, particularly strained relations between the parties, to justify the grant of separation pay, the Court of Appeals erred in ordering the payment thereof, in lieu of reinstatement.

WHEREFORE, the Court **DENIES** the petition and **REINSTATES** the 5 December 2007 Decision of the Labor Arbiter. However, the backwages should be computed from 10 June 2006 when respondent was illegally dismissed up to the time he was reinstated in February 2008.

SO ORDERED.

Brion, del Castillo, Perez, and *Perlas-Bernabe, JJ.*, concur.

SECOND DIVISION

[G.R. No. 205382. April 2, 2014]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **MAURICIO HALLARTE *y* MENDOZA,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINDINGS OF TRIAL COURT, RESPECTED; EXCEPTIONS; BURDEN OF PROOF.— [F]actual findings of the trial court, especially on the credibility of witnesses, are accorded great weight and respect and will not be disturbed on appeal. This rule, however, admits of exceptions such as where there exists a fact or circumstance of weight and influence which has been ignored or misconstrued, or where the trial court has acted arbitrarily in its appreciation of the facts. In this case, the Court gives full weight to the RTC's finding, as affirmed by the CA, that appellant indeed committed the crimes charged and is therefore guilty beyond

reasonable doubt therefor. x x x The trial judge's evaluation, which the CA sustained, now binds the Court, leaving to the appellant the burden to bring to the fore facts or circumstances of weight that were otherwise overlooked, misapprehended or misinterpreted but would materially affect the disposition of the case differently if duly considered.

2. ID.; ID.; ID.; TESTIMONIES OF CHILD-VICTIMS, NORMALLY UPHELD.— "[T]estimonies of child-victims are normally given full weight and credit, since when a girl, particularly if she is a minor, says that she has been raped, she says in effect all that is necessary to show that rape has in fact been committed. When the offended party is of tender age and immature, courts are inclined to give credit to her account of what transpired, considering not only her relative vulnerability but also the shame to which she would be exposed if the matter to which she testified is not true. Youth and immaturity are generally badges of truth and sincerity. A young girl's revelation that she had been raped, coupled with her voluntary submission to medical examination and willingness to undergo public trial where she could be compelled to give out the details of an assault on her dignity, cannot be so easily dismissed as mere concoction."

3. CRIMINAL LAW; RAPE BY SEXUAL ASSAULT; AS TO MINORITY OF THE VICTIM, ALLEGATION IN THE INFORMATION AND STIPULATION DURING THE PRE-TRIAL CONFERENCE ARE INSUFFICIENT AS MINORITY MUST BE ADEQUATELY EVINCED; PROPER PENALTY.— [W]hile the Court upholds the penalty of *reclusion perpetua* imposed upon appellant in Criminal Case No. Q-00-93225 for Simple Rape, there is a need to modify the penalty imposed in Criminal Case No. Q-00-93226 for Rape by Sexual Assault in view of the failure of the prosecution to satisfactorily prove the age of BBB. While the information alleged that BBB was "8 years of age, a minor," and the parties stipulated on her minority during the pre-trial conference, the same are insufficient evidence of her age which must be proved conclusively and indubitably as the crime itself. As the Court succinctly explained in *People v. Soria*: **"[T]here must be independent evidence proving the age of the victim, other than the testimonies of prosecution witnesses and the absence of denial by the accused."** Documents such as her original

or duly certified birth certificate, baptismal certificate or school records would suffice as competent evidence of her age. Here, **there was nothing on record to prove the minority of "AAA" other than her testimony, appellant's absence of denial, and their pre-trial stipulation**. The prosecution also failed to establish that the documents referred to above were lost, destroyed, unavailable or otherwise totally absent. Apart from BBB's testimony and the aforesaid stipulation, records are bereft of sufficient evidence to prove BBB's age. Thus, the penalty prescribed in Article 266-B of the Revised Penal Code, as amended, for Rape by Sexual Assault must be imposed in this case, *i.e.*, *prision mayor*, which ranges from 6 years and 1 day to 12 years. Applying the ISLAW, the penalty next lower in degree is *prision correccional*, which ranges from 6 months and 1 day to 6 years. Hence, a penalty of 4 years and 2 months of *prision correccional*, as minimum, to 10 years of *prision mayor*, as maximum, is imposed upon appellant for the crime of Rape by Sexual Assault.

4. ID.; SIMPLE RAPE AND RAPE BY SEXUAL ASSAULT; PROPER DAMAGES.— [I]n Criminal Case No. Q-00-93225 for Simple Rape, the reduced amounts of ₱50,000.00 as civil indemnity and ₱50,000.00 as moral damages are proper. The amount of ₱30,000.00 awarded by way of exemplary damages is affirmed. On the other hand, in Criminal Case No. Q-00-93226 for Rape by Sexual Assault, the Court awards the reduced amounts of ₱30,000.00 as civil indemnity, ₱30,000.00 as moral damages, and ₱30,000.00 as exemplary damages, in line with prevailing jurisprudence. All damages awarded shall earn interest at the legal rate of 6% per annum from date of finality of judgment until fully paid.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

R E S O L U T I O N

PERLAS-BERNABE, *J.*:

On appeal is the Decision[1] dated April 20, 2012 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 04061 which affirmed with modification the Judgment[2] dated April 7, 2009 of the Regional Trial Court of Quezon City, Branch 94 (RTC) in Criminal Case Nos. Q-00-93225-26, finding accused-appellant Mauricio Hallarte *y* Mendoza (appellant) guilty beyond reasonable doubt of the crimes of Simple Rape and Rape by Sexual Assault, respectively.

The two (2) separate Informations[3] under which appellant was charged are as follows:

Criminal Case No. Q-00-93225[4]

That on or about the 4th day of June, 2000, in Quezon City, Philippines, the said accused, by means of force and intimidation, did, then and there, willfully, unlawfully and feloniously drag [AAA],[5] a minor, 7 years old, his own niece, into his house located at No. 24 Brgy. Road, Brgy[.] Pasong Tamo, this City, and once inside have carnal knowledge with the said [AAA], against her will and without her consent which act debase, degrade and demeans the intrinsic worth of dignity of said [AAA] as a human being, to the damage and prejudice of the said offended party.

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[1] *Rollo*, pp. 2-20. Penned by Associate Justice Edwin D. Sorongon, with Associate Justices Noel G. Tijam and Romeo P. Barza, concurring.

[2] Records, pp. 200-206. Penned by Presiding Judge Roslyn M. Rabara-Tria.

[3] Docketed as Crim. Case No. Q-00-93225, *id.* at 2-3; and Crim. Case No. Q-00-93226, *id*. at 4-5.

[4] *Id.* at 2.

[5] The real name of the victim and her immediate family are withheld in order to protect their privacy, in accordance with Republic Act No. (RA) 7610, otherwiseknown as the"Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act," and RA 9262, otherwise known as the "Anti-Violence Against Women and Their Children Act of 2004." (See *People v. Cabalquinto,* 533 Phil. 703, 705-706 [2006].)

Criminal Case No. Q-00-93226[6]

That on or about the 17th day of June, 2000, in Quezon City, Philippines, the said accused, by means of force and intimidation and with lewd design, did, then and there [willfully], unlawfully and feloniously commit an act of sexual assault against one [BBB],[7] 8 years of age, a minor, his own niece, by then and there inserting his penis into her mouth against her will and without her consent, which act debase, degrade and demean the intrinsic worth of dignity of said [BBB] as a human being, to her damage and prejudice.

CONTRARY TO LAW.

During his arraignment,[8] appellant, assisted by counsel *de oficio*, pleaded *not guilty* to the offenses charged. At pre-trial, the parties stipulated[9] on the minority of both AAA and BBB (private complainants).

The Facts

In the afternoon of June 4, 2000, AAA was playing with Charissa Hallarte (Charissa), her cousin and the daughter of her uncle,[10] herein appellant, at the second floor of the latter's house in Barangay Pasong Tamo, Quezon City where she had also been staying.[11] At the time, appellant happened to also be at the second floor of the house. When Charissa went to the ground floor to urinate, appellant approached AAA and began to remove his shorts. Thereafter, he laid AAA, raised her skirt and pulled down her underwear. Then, appellant inserted his penis into her vagina, causing AAA to feel pain and to shout for help from Charissa ("*[H]elp me, Nina*").[12] When appellant realized that his daughter Charissa might be returning anytime,

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[6] Records, p. 4.

[7] See note 4.

[8] Records, p. 20.

[9] *Id*. at 30.

[10] See TSN, October 24, 2001, p. 3 and TSN, June 21, 2004, p. 3.

[11] See Order dated November 8, 2000; records, p. 30.

[12] TSN, October 24, 2001, p. 8.

he let AAA go.[13] AAA did not recount her ordeal to anyone until she complained to her mother, CCC,[14] of the pain in her vagina. AAA then confessed that her uncle, appellant herein, inserted his penis into her vagina.[15]

On the other hand, at around 8 o'clock in the evening of June 17, 2000, while appellant's other niece,[16] BBB, was with him in his house, he inserted his penis into her mouth and threatened her not to tell anyone what he had done. BBB did not report the incident immediately because she feared appellant.[17]

Subsequently, private complainants were brought to the Talipapa Police Station (PS-3) of the Philippine National Police (PNP) Central Police District Office (CPDO) where they gave their respective sworn statements[18] against appellant.

On June 22, 2000, AAA was examined by Dr. Jaime Rodrigo Leal, M.D. (Dr. Leal), a medico-legal officer of the PNP in Camp Crame, Quezon City, whose findings contained in Medico-Legal Report No. M-1945-00[19] dated June 22, 2000 reveal that AAA's hymen had "[n]o laceration nor discharge," which led to the conclusion of "[n]ormal genital findings." However, Dr. Leal clarified[20] that the foregoing findings "[do] not exclude sexual abuse."

In defense, appellant denied[21] the charges against him and claimed that on June 4, 2000, on the date when the rape incident involving AAA allegedly transpired, he was in Novaliches,

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[13] *Id.* at 5-9.

[14] See note 4.

[15] TSN, October 24, 2001, pp. 9-10.

[16] See TSN, August 8, 2001, p. 3 and TSN, June 21, 2004, p. 3.

[17] See TSN, August 8, 2001, pp. 3-8.

[18] Exh. "A", records, pp. 8-9; and Exh. "B", records, pp. 10-11.

[19] Exh. "E", *id.* at 67.

[20] TSN, April 23, 2002, p. 14.

[21] TSN, June 21, 2004, p. 7.

Quezon City working as a carpenter, where he reported for duty at 8 o'clock in the morning and finished his tasks at 5 o'clock in the afternoon.[22] He asserted that from his house in Barangay Pasong Tamo to Novaliches, it would take him around one and a half hours of travel time.[23] Similarly, on June 17, 2000, the date of the incident against BBB, he was at the office of Vanguard Agency (Vanguard)[24] in Kalayaan, Quezon City where he also used to work,[25] which would take an hour's travel from his house.[26] Appellant denied[27] knowledge of why he was being criminally charged by the parents of the private complainants.

To corroborate appellant's defense of alibi, Romeo Hibek, the Senior Officer of Vanguard, testified that appellant was a contractual carpenter in their company and that from April 16, 2000 to June 19, 2000, appellant was involved in the renovation of their building,[28] as evidenced by the Certification[29] that he issued dated January 20, 2005. He also testified that Vanguard had no time card or logbook to monitor the attendance of its workers. [30] Rolando Montecalvo, one of appellant's co-workers therein, likewise testified[31] to corroborate the latter's whereabouts on said dates.

The RTC Ruling

On April 7, 2009,[32] after trial on the merits, the RTC convicted appellant as charged. Hence, in Criminal Case No. Q-00-93225

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[22] *Id*. at 4-5.

[23] *Id*. at 5-6.

[24] Also referred to in the records as "Vanguard Watchman Agency, Inc."

[25] TSN, June 21, 2004, p. 5.

[26] *Id*. at 6.

[27] *Id*. at 8-9.

[28] TSN, August 10, 2005, pp. 2-4.

[29] Exh. "1", records, p. 119.

[30] TSN, August 10, 2005, p. 8.

[31] TSN, June 25, 2008, pp. 3-6.

[32] See Judgment of the RTC; records, pp. 200-206.

for Simple Rape, the RTC sentenced appellant to suffer the penalty of *reclusion perpetua* and ordered him to pay AAA the amounts of ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱25,000.00 as exemplary damages. On the other hand, in Criminal Case No. Q-00-93226 for Rape by Sexual Assault, the RTC sentenced appellant to an indeterminate penalty of 10 years, 2 months and 21 days of *prision mayor* in its medium period, as minimum, to 12 years, 5 months and 10 days of *reclusion temporal* in its minimum period, as maximum, and ordered him to pay BBB the amounts of ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱25,000.00 as exemplary damages.[33]

In convicting appellant, the RTC gave full weight and credence to the testimonies of the private complainants, which it found to be straightforward, candid, and bearing the earmarks of truth and sincerity. It considered as inconsequential the finding of Dr. Leal that there was "[n]o laceration nor discharge" on AAA's hymen, explaining that the slightest penetration of the woman's private organ is considered as rape.[34]

Conversely, the RTC rejected appellant's defense of alibi, having failed to establish by clear and convincing evidence *(a)* his presence at another place at the time of the perpetration of the offenses, and *(b)* the physical impossibility of his presence at the scene of the crime on both instances. Instead, by his own testimony, appellant confirmed that his workplace in Novaliches (in relation to the June 4, 2000 Simple Rape incident) as well as his workplace in Kalayaan (in relation to the June 17, 2000 Rape by sexual Assault incident) were, at the most, only an hour and a half away from his house where both incidents took place.[35]

However, while it has been established that both private complainants were the nieces of appellant, the RTC did not

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[33] *Id*. at 206.

[34] *Id*. at 204.

[35] *Id*. at 204-205.

appreciate the special qualifying circumstance of relationship, not having been specifically pleaded or alleged in the informations under which appellant was separately charged.[36] Aggrieved, appellant appealed[37] his conviction to the CA.

The CA Ruling

In a Decision[38] dated April 20, 2012, the CA affirmed appellant's conviction for both crimes but modified the penalty imposed in Criminal Case No. Q-00-93226 for Rape by Sexual Assault, meting instead the penalty of *reclusion temporal* in its medium period as prescribed under Section 5(b)[39] of Republic Act No. (RA) 7610.[40] Applying the Indeterminate Sentence Law (ISLAW), appellant was sentenced to an indeterminate penalty of 12 years, 10 months and 21 days of *reclusion temporal*, as minimum, and 15 years, 6 months and 20 days of *reclusion temporal*, as maximum. The CA likewise increased the damages awarded to each of the private complainants as follows: ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱30,000.00 as exemplary damages.

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[36] See *id*. at 205.

[37] *Id*. at 211.

[38] *Rollo*, pp. 2-20.

[39] Section 5. **Child prostitution and other sexual abuse**. – x x x.

x x x x x x x x x

(b) Those who commit the act of sexual intercourse or lascivious conduct with a child exploited in prostitution or subject to other sexual abuse; Provided, That when the victim is under twelve (12) years of age, the perpetrators shall be prosecuted under Article 335, paragraph 3, for rape and Article 336 of Act No. 3815, as amended, the Revised Penal Code, for rape or lascivious conduct, as the case may be: Provided, **That the penalty for lascivious conduct when the victim is under twelve (12) years of age shall be *reclusion temporal* in its medium period**; x x x.

x x x x x x x x x

[40] Entitled "AN ACT PROVIDING FOR STRONGER DETERRENCE AND SPECIAL PROTECTION AGAINST CHILD ABUSE, EXPLOITATION AND DISCRIMINATION, AND FOR OTHER PURPOSES."

The Issue Before the Court

The sole issue before the Court is whether the CA erred in affirming appellant's conviction for both crimes charged.

The Court's Ruling

The appeal is bereft of merit.

Time and again, the Court has held that factual findings of the trial court, especially on the credibility of witnesses, are accorded great weight and respect and will not be disturbed on appeal. This rule, however, admits of exceptions such as where there exists a fact or circumstance of weight and influence which has been ignored or misconstrued, or where the trial court has acted arbitrarily in its appreciation of the facts.[41]

In this case, the Court gives full weight to the RTC's finding, as affirmed by the CA, that appellant indeed committed the crimes charged and is therefore guilty beyond reasonable doubt therefor. As observed by the RTC, which had the opportunity to personally scrutinize both AAA's and BBB's conduct and demeanor during trial, they were credible witnesses whose testimonies must be accorded great probative weight. The trial judge's evaluation, which the CA sustained, now binds the Court, leaving to the appellant the burden to bring to the fore facts or circumstances of weight that were otherwise overlooked, misapprehended or misinterpreted but would materially affect the disposition of the case differently if duly considered.[42] Unfortunately for appellant, he failed to discharge this burden.

Moreover, "[t]estimonies of child-victims are normally given full weight and credit, since when a girl, particularly if she is a minor, says that she has been raped, she says in effect all that is necessary to show that rape has in fact been committed. When the offended party is of tender age and immature, courts are inclined to give credit to her account of what transpired, considering not only her relative vulnerability but also the shame

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[41] *People v. Esperanza*, 453 Phil. 54, 67 (2003).

[42] *People v. Lupac*, G.R. No. 182230, September 19, 2012, 681 SCRA 390, 396.

to which she would be exposed if the matter to which she testified is not true. Youth and immaturity are generally badges of truth and sincerity. A young girl's revelation that she had been raped, coupled with her voluntary submission to medical examination and willingness to undergo public trial where she could be compelled to give out the details of an assault on her dignity, cannot be so easily dismissed as mere concoction."[43]

However, while the Court upholds the penalty of *reclusion perpetua* imposed upon appellant in Criminal Case No. Q-00-93225 for Simple Rape, there is a need to modify the penalty imposed in Criminal Case No. Q-00-93226 for Rape by Sexual Assault in view of the failure of the prosecution to satisfactorily prove the age of BBB. While the information[44] alleged that BBB was "8 years of age, a minor," and the parties stipulated[45] on her minority during the pre-trial conference, the same are insufficient evidence of her age which must be proved conclusively and indubitably as the crime itself.[46] As the Court succinctly explained in *People v. Soria*:[47]

"[**T]here must be independent evidence proving the age of the victim, other than the testimonies of prosecution witnesses and the absence of denial by the accused.**" Documents such as her original or duly certified birth certificate, baptismal certificate or school records would suffice as competent evidence of her age. Here, **there was nothing on record to prove the minority of "AAA" other than her testimony, appellant's absence of denial, and their pre-trial stipulation**. The prosecution also failed to establish that the documents referred to above were lost, destroyed, unavailable or otherwise totally absent.[48] (Emphases and underscoring supplied)

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[43] *People v. Garcia*, G.R. No. 200529, September 19, 2012, 681 SCRA 465, 477-478; citations omitted.

[44] Records, pp. 4-5.

[45] See Pre-Trial Order dated November 8, 2000; *id.* at 30.

[46] See *People v. Albalate, Jr.*, G.R. No. 174480, December 18, 2009, 608 SCRA 535, 546.

[47] G.R. No. 179031, November 14, 2012, 685 SCRA 483.

[48] *Id.* at 507; citations omitted.

Apart from BBB's testimony and the aforesaid stipulation, records are bereft of sufficient evidence to prove BBB's age. Thus, the penalty prescribed in Article 266-B of the Revised Penal Code, as amended,[49] for Rape by Sexual Assault must be imposed in this case, *i.e.*, *prision mayor*, which ranges from 6 years and 1 day to 12 years. Applying the ISLAW, the penalty next lower in degree is *prision correccional*, which ranges from 6 months and 1 day to 6 years. Hence, a penalty of 4 years and 2 months of *prision correccional*, as minimum, to 10 years of *prision mayor*, as maximum, is imposed upon appellant for the crime of Rape by Sexual Assault.

Finally, in order to conform with prevailing jurisprudence,[50] the Court deems it proper to modify the amount of damages awarded in both convictions. Thus, in Criminal Case No. Q-00-93225 for Simple Rape, the reduced amounts of ₱50,000.00 as civil indemnity and ₱50,000.00 as moral damages are proper. The amount of ₱30,000.00 awarded by way of exemplary damages is affirmed. On the other hand, in Criminal Case No. Q-00-93226 for Rape by Sexual Assault, the Court awards the reduced amounts of ₱30,000.00 as civil indemnity, ₱30,000.00 as moral damages, and ₱30,000.00 as exemplary damages, in line with prevailing jurisprudence.[51] All damages awarded shall earn interest at the legal rate of 6% per annum from date of finality of judgment until fully paid.

WHEREFORE, the appeal is **DENIED**. The Decision dated April 20, 2012 of the CA in CA-G.R. CR-HC No. 04061 is **AFFIRMED** with the following **MODIFICATIONS**:

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[49] As amended by RA 8353 entitled "AN ACT EXPANDING THE DEFINITION OF THE CRIME OF RAPE, RECLASSIFYING THE SAME AS A CRIME AGAINST PERSONS, AMENDING FOR THE PURPOSE ACT NO. 3815, AS AMENDED, OTHERWISE KNOWN AS THE REVISED PENAL CODE, AND FOR OTHER PURPOSES, "otherwise known as the "Anti-Rape Law of 1997."

[50] See *People v. Lupac*, *supra* note 42; see also *People v. Estrada*, G.R. No. 178318, January 15, 2010, 610 SCRA 222, 230-235.

[51] See *People v. Soria*, *supra* note 47, at 508; see also*People v. Lumaque*, G.R. No. 189297, June 5, 2013; *Pielago v. People*, G.R. No. 202020, March 13, 2013, 693 SCRA 476, 489; and *People v. Chingh*, G.R. No. 178323, March 16, 2011, 645 SCRA 573.

(*a*) In Criminal Case No. Q-00-93225 for Simple Rape, accused-appellant Mauricio Hallarte *y* Mendoza is sentenced to suffer the penalty of *reclusion perpetua*, and is ordered to pay AAA the amounts of ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱30,000.00 as exemplary damages.

(*b*) In Criminal Case No. Q-00-93226 for Rape by Sexual Assault, accused-appellant Mauricio Hallarte *y* Mendoza is sentenced to suffer the indeterminate penalty of imprisonment for 4 years and 2 months of *prision correccional*, as minimum, to 10 years of *prision mayor*, as maximum, and is ordered to pay BBB the amounts of ₱30,000.00 as civil indemnity, ₱30,000.00 as moral damages, and ₱30,000.00 as exemplary damages.

The amounts of damages awarded are subject to interest at the legal rate of 6% per annum, to be reckoned from the date of finality of this judgment until fully paid.

SO ORDERED.

Carpio (Chairperson), Brion, del Castillo, and *Perez, JJ.*, concur.

FIRST DIVISION

[G.R. No. 206770. April 2, 2014]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **NOEL PRAJES and ALIPA MALA,** *accused-appellants.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; FINDINGS OF THE TRIAL COURT AFFIRMED BY THE

APPELLATE COURT, BINDING TO THE SUPREME COURT; EXCEPTIONS.— [T]he Court reiterates the settled rule that "the findings of the trial court, its calibration of the testimonies of the witnesses, and its assessment of the probative weight thereof, as well as its conclusions anchored on said findings are accorded respect if not conclusive effect. This is truer if such findings were affirmed by the appellate court. When the trial court's findings have been affirmed by the appellate court, x x x, said findings are generally binding upon us[,]" save in settled exceptions such as: (1) when the inference made is manifestly mistaken, absurd or impossible; (2) when there is grave abuse of discretion; (3) when the findings are grounded entirely on speculations, surmises or conjectures; (4) when the judgment of the CA is based on misapprehension of facts; (5) when the CA, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (6) when the findings of fact are conclusions without citation of specific evidence on which they are based; (7) when the CA manifestly overlooked certain relevant facts not disputed by the parties and which, if properly considered, would justify a different conclusion; and (8) when the findings of fact of the CA are premised on the absence of evidence and are contradicted by the evidence on record.

2. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (RA 9165); CHAIN OF CUSTODY; DISCUSSED.— On the issue of chain of custody, Section 21 of R.A. No. 9165 mandates that "[t]he apprehending team having initial custody and control of the [seized] drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof[.]" In relation thereto, Section 21 of the law's Implementing Rules and Regulations (IRR) provides in part: SECTION 21. *Custody and Disposition of Confiscated, Seized and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment*. — x x x: (a) x x x the physical inventory and photograph shall be conducted at the place where the search

warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; Provided, further, that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items[.] These "[s]tatutory rules on preserving the chain of custody of confiscated prohibited drugs and related items are designed to ensure the integrity and reliability of the evidence to be presented against the accused. Their observance is the key to the successful prosecution of illegal possession or illegal sale of prohibited drugs." In a line of cases, the Court has nonetheless explained that "while the chain of custody should ideally be perfect, in reality it is not, 'as it is almost always impossible to obtain an unbroken chain.'" The limitation on chain of custody is also recognized in the afore-quoted Section 21 of R.A. No. 9165's IRR, as it states that non-compliance with the rules' requirements under justifiable grounds, as long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items. In resolving drug cases, we then repeatedly emphasize that "what is essential is 'the preservation of the integrity and the evidentiary value of the seized items, as the same would be utilized in the determination of the guilt or innocence of the accused.'"

3. ID.; ID.; ID.; FAILURE TO PRESENT PHYSICAL INVENTORY AND PHOTOGRAPH OF THE SEIZED DRUGS DID NOT RENDER INADMISSIBLE THE PACKS OF *SHABU* SEIZED FROM ACCUSED-APPELLANTS.— [T]he failure of the prosecution to present a physical inventory and photograph of the seized drugs did not render inadmissible the packs of *shabu* that were seized from the accused-appellants, especially as we consider that the integrity and evidentiary value of the drugs did not appear to have been compromised. This was similar with the Court's ruling in *People v. Torres* and *Ambre v. People*, wherein we affirmed the conviction of the accused notwithstanding some deviations from the required procedure on physical inventory and photographs of the seized items.

4. ID.; ID.; ILLEGAL SALE OF *SHABU*; ELEMENTS OF THE CRIME, ESTABLISHED.— As against the accused-appellants' denial, an inherently weak defense, the evidence presented by the prosecution deserves credence. The following elements of illegal sale of *shabu* were sufficiently established during the trial: (a) the identities of the buyer and the seller, the object of the sale, and the consideration; and (b) the delivery of the thing sold and the payment for the thing.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellants.

D E C I S I O N

REYES, *J.*:

Before the Court is an appeal from the Decision[1] dated May 30, 2012 of the Court of Appeals (CA) in CA-G.R. CEB CR-HC No. 00462, which affirmed the Decision[2] dated June 29, 2004 of the Regional Trial Court (RTC) of Cebu City, Branch 15, finding Noel Prajes (Prajes) and Alipa Mala (Mala) (accused-appellants) guilty for violation of Section 5, Article II of Republic Act (R.A.) No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

The Antecedents

The accused-appellants were accused of violating Section 5, Article II of R.A. No. 9165 *via* an Information filed with the RTC of Cebu and docketed as Crim. Case No. CBU-63836. The accusatory portion of the Information reads:

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[1] Penned by Associate Justice Pamela Ann Abella Maxino, with Associate Justices Gabriel T. Ingles and Victoria Isabel A. Paredes, concurring; *rollo*, pp. 3-19.

[2] Issued by Presiding Judge Fortunato M. De Gracia, Jr., CA *rollo*, pp. 48-54.

That sometime on 04 September 2002, in the City of Cebu, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conniving and confederating with each other and mutually helping one another, with deliberate intent, did then and there sell, trade, dispense, deliver and/or give away to a National Bureau of Investigation Operative who posed as buyer: White Crystalline substances having a total net weight of 195.6580 grams placed inside three (3) transparent plastic packs: positive for methylamphetamine hydrochloride, a dangerous drug locally known as *shabu*, without authority of law.[3]

The accused-appellants pleaded "not guilty" when arraigned. After pre-trial, trial on the merits ensued.[4]

According to the prosecution, the National Bureau of Investigation (NBI) in Cebu City received reports that the accused-appellants were engaged in the sale of illegal drugs. Following surveillance operations conducted during the last week of August 2002, a buy-bust operation was organized by the NBI for September 4, 2002.[5]

Thus, at around 1:00 p.m. on September 4, 2002, NBI's informant, Rene Sabayton (Sabayton) transacted with the accused-appellants for a supposed buyer's purchase of *shabu* weighing 200 grams for ₱180,000.00.[6] At 4:00 p.m., the buy-bust team, headed by Senior Agent Atty. Angelito Magno (Atty. Magno) and composed of NBI Supervising Agent Vicente Minguez (SA Minguez), Special Investigator Teodoro Saavedra (SI Saavedra), SI Ray Tumalon (SI Tumalon), SI Danilo Garay and SA Rennan Oliva, proceeded to Kinasang-an, Pardo, Cebu City where the purchase would be made. SI Tumalon was designated the poseur-buyer. Atty. Magno prepared the buy-bust money amounting to ₱4,500.00, composed of nine ₱500.00 bills dusted with fluorescent powder and which were combined with boodle money.[7]

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[3] *Id*. at 48.

[4] *Id*.

[5] *Id*.

[6] *Id*.

[7] *Id*. at 49.

As previously arranged with Sabayton, Prajes met up with Sabayton and SI Tumalon in a makeshift house in Kinasang-an, where Mala later joined them. Since Prajes had not brought with him the illegal drugs to be sold, the group proceeded to his father's house which was only 15 to 20 meters away from the makeshift house[8] and there, SI Tumalon received the illegal drugs from Prajes.

While they were at the ground floor of the house, Prajes handed to SI Tumalon two packs of *shabu* having a total weight of 100 grams. When SI Tumalon pointed out that he needed 200 grams, Prajes instructed Mala to produce more stock. Mala left the house, then later came back with another pack, which he handed to SI Tumalon. Thereafter, SI Tumalon gave one bundle of the buy-bust money to Prajes, and the other bundle to Mala.[9]

Upon the accused-appellants' receipt of the buy-bust money, SI Tumalon introduced himself to them as an NBI agent. SI Tumalon made a "missed call" to SA Minguez's phone, the team's pre-agreed signal to indicate that the sale had been consummated, and then arrested the accused-appellants.[10] Soon thereafter, the other members of the buy-bust team arrived. The accused-appellants were handcuffed and brought to the NBI office, where their photographs and fingerprints were taken.[11] At the NBI office, SI Tumalon handed the buy-bust money and three packs of *shabu* to SI Saavedra, who placed his markings on the packs of *shabu*. SI Saavedra also prepared the letter-request for examination of the illegal drugs, which he personally turned over to Chemist Rommel Paglinawan[12] of the Forensic Chemistry Section, Central Visayas Regional Office of the NBI. A laboratory examination of the three packs sold by the accused-appellants to SI Tumalon confirmed that the specimen contained

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[8] *Id*.

[9] *Id*.

[10] *Id*. at 49-50.

[11] *Id*. at 49.

[12] *Id*. at 51.

methylamphetamine hydrochloride or *shabu*. An ultraviolet examination performed by the NBI also confirmed the presence of fluorescent powder on the accused-appellants' hands.

The accused-appellants denied the charge against them. Prajes claimed that at about 4:00 p.m. on September 4, 2002, he was sleeping at his house in Kinasang-an when a neighbor, Renante Paradero (Paradero), woke him up to inform him that some persons were looking for him. He then proceeded to Paradero's house and there saw Sabayton, whom he had previously met in a "sniffing session" and who had called him up at around 1:00 p.m. on September 4, 2002 for the purchase of *shabu*. Sabayton was with two companions, who inquired from Prajes about the purchase. Prajes, Sabayton and his two companions then proceeded to the house of Prajes' father, where Prajes received the drugs from a person sent by a certain "Alex". Prajes handed the pack of *shabu* to Sabayton, then was immediately handcuffed by SI Tumalon. Sabayton hit Prajes' handcuffed right hand with money that was brought by the buy-bust team. Thereafter, Prajes was taken to the NBI Office.

For Mala's defense, witness Magdalena Abarquez claimed that at around 4:00 p.m. on September 4, 2002, she saw Mala enter the house of Prajes. When he tried to leave the house, he was prevented by someone who was inside the house.[13]

Sabayton was called on the witness stand by the defense as a hostile witness. He claimed that he was arrested by NBI operatives on September 3, 2002. While at the NBI office, the operatives asked for a gift or "*regalo*" by giving names of persons whom they could arrest, in exchange for his freedom. Thus, he gave the name of Prajes and coordinated with the latter for the drug purchase.[14] After Prajes presented the *shabu* to Sabayton during the buy-bust operation, he called on Mala to test and sniff the *shabu*. Before the latter could do so, SI Tumalon pointed a gun at the accused-appellants and handcuffed them.

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[13] *Id*. at 52.

[14] *Id*.

When Prajes refused to receive the buy-bust money, SI Tumalon slapped the money on Prajes' handcuffed hands. Notwithstanding Sabayton's participation in the buy-bust which led to the arrest of the accused-appellants, he was neither released from jail nor relieved from prosecution for his violation of R.A. No. 9165.[15]

The RTC Ruling

On June 29, 2004, the RTC of Cebu City, Branch 15, rendered a Decision[16] finding the accused-appellants guilty for violation of Section 5, Article II of R.A. No. 9165, and sentencing them to each suffer the penalty of life imprisonment and to pay fine of ₱500,000.00.[17] Dissatisfied with the trial court's ruling, the accused-appellants appealed to the CA.

The CA Ruling

In a Decision[18] dated May 30, 2012, the CA affirmed *in toto* the decision of the RTC. The appellate court found no credence in the denials that were posed by the accused-appellants. Instead, it found credible the evidence presented by the prosecution to prove the elements of the crime of illegal sale of drugs, as well as its showing that there was sufficient compliance by the NBI operatives with the rule on chain of custody.

The Present Appeal

Hence, the present appeal wherein the accused-appellants insist on the prosecution's failure to prove their guilt beyond reasonable doubt. The accused-appellants also question the subject drugs' identity and the NBI's observance of the rule on the chain of custody. They argue that it was unclear as to who actually marked the subject packs of *shabu*, and that there were no photographs and physical inventory of the seized items, even when the same are required under the law.

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[15] *Id*.

[16] *Id*. at 48-54.

[17] *Id*. at 54.

[18] *Id*. at 3-19.

This Court's Ruling

The appeal is bereft of merit.

At the outset, the Court reiterates the settled rule that "the findings of the trial court, its calibration of the testimonies of the witnesses, and its assessment of the probative weight thereof, as well as its conclusions anchored on said findings are accorded respect if not conclusive effect. This is truer if such findings were affirmed by the appellate court. When the trial court's findings have been affirmed by the appellate court, x x x, said findings are generally binding upon us[,]"[19] save in settled exceptions such as: (1) when the inference made is manifestly mistaken, absurd or impossible; (2) when there is grave abuse of discretion; (3) when the findings are grounded entirely on speculations, surmises or conjectures; (4) when the judgment of the CA is based on misapprehension of facts; (5) when the CA, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (6) when the findings of fact are conclusions without citation of specific evidence on which they are based; (7) when the CA manifestly overlooked certain relevant facts not disputed by the parties and which, if properly considered, would justify a different conclusion; and (8) when the findings of fact of the CA are premised on the absence of evidence and are contradicted by the evidence on record.[20] Upon review, the Court has determined that the present case does not fall under any of these exceptions. We find no cogent reason to deviate from the factual findings, and consequent rulings, of the trial and appellate courts.

On the issue of chain of custody, Section 21 of R.A. No. 9165 mandates that "[t]he apprehending team having initial custody and control of the [seized] drugs shall, immediately after seizure and confiscation, physically inventory and

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[19] *People v. Vitero*, G.R. No. 175327, April 3, 2013, 695 SCRA 54, 64-65.

[20] *People v. Omictin*, G.R. No. 188130, July 26, 2010, 625 SCRA 611, 619, citing *Dueñas v. Guce-Africa*, G.R. No. 165679, October 5, 2009, 603 SCRA 11, 20-21.

photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof[.]" In relation thereto, Section 21 of the law's Implementing Rules and Regulations (IRR) provides in part:

> SECTION 21. *Custody and Disposition of Confiscated, Seized and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/ Paraphernalia and/or Laboratory Equipment.* — x x x:
>
> (a) x x x the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; Provided, further, that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items[.]

These "[s]tatutory rules on preserving the chain of custody of confiscated prohibited drugs and related items are designed to ensure the integrity and reliability of the evidence to be presented against the accused. Their observance is the key to the successful prosecution of illegal possession or illegal sale of prohibited drugs."[21]

In a line of cases, the Court has nonetheless explained that "while the chain of custody should ideally be perfect, in reality it is not, 'as it is almost always impossible to obtain an unbroken chain.'"[22]

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[21] *People v. Relato,* G.R. No. 173794, January 18, 2012, 663 SCRA 260, 262.

[22] *People v. Mendoza,* G.R. No. 189327, February 29, 2012, 667 SCRA 357, 368, citing *Asiatico v. People*, G.R. No. 195005, September 12, 2011, 657 SCRA 443.

The limitation on chain of custody is also recognized in the afore-quoted Section 21 of R.A. No. 9165's IRR, as it states that non-compliance with the rules' requirements under justifiable grounds, as long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items. In resolving drug cases, we then repeatedly emphasize that "what is essential is 'the preservation of the integrity and the evidentiary value of the seized items, as the same would be utilized in the determination of the guilt or innocence of the accused.'"[23]

On the issue of the subject drugs' marking as part of the chain of custody requirement, the accused-appellants point out that SI Tumalon and SI Saavedra both named SI Saavedra as the one who marked the seized drugs, but witnesses SA Minguez and Atty. Magno each testified that it was SI Tumalon and the forensic chemist, respectively, who effected such marking. The Court, however, agrees with the CA's observation that although there were conflicting accounts by the prosecution witnesses as to the person who actually marked the seized drugs, the failure of SA Minguez and Atty. Magno to identify the said person could be readily explained by the fact that they had no actual participation in the evidence's marking. As against their conflicting statements, what were significant were the testimonies of SI Tumalon and SI Saavedra, being the persons who actually seized, endorsed and marked the evidence. Both agreed that following the accused-appellants' arrest, the seized packs of *shabu* were handed by SI Tumalon to SI Saavedra, who was the one who placed the markings on the evidence,[24] before the same were brought to the laboratory for examination. As aptly explained by the appellate court:

> SA Minguez may have incorrectly assumed that it was SI Tumalon, their poseur-buyer, who made the markings on the packs of *shabu* that were confiscated in the ensuing confusion. However, SI Tumalon

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[23] *People v. Torres*, G.R. No. 191730, June 5, 2013, 697 SCRA 452.

[24] *Rollo*, pp. 16-17.

himself testified that he turned-over the drugs to SA Saavedra. Atty. Magno's statement that it was "maybe our Forensic Chemist" who made the markings on the three packs is inconsequential when considered with the positive testimonies of SI Tumalon and SA Saavedra. SA Minguez and Atty. Magno assumed supporting roles. It was SI Tumalon who was in the thick of things so to speak, as he was the poseur-buyer and he was the one who took the *shabu* from accused-appellants and handed it to SA Saavedra for marking. Moreover, SA Saavedra's identification of his own handwriting puts any doubt to rest.[25] (Citations omitted)

The fact that the marking was performed by SA Saavedra only upon the buy-bust team's arrival at the NBI office did not adversely affect the prosecution's case against the accused-appellants. Given the situation at the house where the accused-appellants were caught *in flagrante delicto* and then arrested by the buy-bust team, the failure of SA Saavedra to mark the seized drugs at the said site was justified. In his testimony before the trial court, SA Minguez described that after the accused-appellants' arrest, their neighbors interfered and rallied for the accused-appellants, even compelling members of the buy-bust team inside the house to seek the immediate aid of their peers so that they could leave the premises.[26]

Even the failure of the prosecution to present a physical inventory and photograph of the seized drugs did not render inadmissible the packs of *shabu* that were seized from the accused-appellants, especially as we consider that the integrity and evidentiary value of the drugs did not appear to have been compromised. This was similar with the Court's ruling in *People v. Torres*[27] and *Ambre v. People*,[28] wherein we affirmed the conviction of the accused notwithstanding some deviations from the required procedure on physical inventory and photographs of the seized items.

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[25] *Id.*

[26] CA *rollo*, p. 50.

[27] *Supra* note 23.

[28] G.R. No. 191532, August 15, 2012, 678 SCRA 552.

As against the accused-appellants' denial, an inherently weak defense, the evidence presented by the prosecution deserves credence. The following elements of illegal sale of *shabu* were sufficiently established during the trial: (a) the identities of the buyer and the seller, the object of the sale, and the consideration; and (b) the delivery of the thing sold and the payment for the thing.[29] During a planned buy-bust operation, SI Tumalon served as a poseur-buyer and was able to successfully purchase packs of *shabu* weighing 195 grams, more or less, from the accused-appellants for a total consideration of ₱180,000.00. The payment was handed to the accused-appellants by SI Tumalon. An examination conducted by the Forensic Chemistry Section, Central Visayas Regional Office, NBI in Capitol Site, Cebu City, confirmed that the packs contained methylamphetamine hydrochloride.[30] There was nothing on record which would indicate that the substance purchased by SI Tumalon from the accused-appellants during the buy-bust operation was different from the subject of the NBI Forensic Chemistry Section's examination, and that which was eventually presented by the prosecution in court to establish their case against the accused-appellants.

WHEREFORE, the Decision dated May 30, 2012 of the Court of Appeals in CA-G.R. CEB CR-HC No. 00462 is **AFFIRMED**.

SO ORDERED.

Sereno, C.J. (Chairperson), Leonardo-de Castro, Bersamin, and *Villarama, Jr., JJ.,* concur.

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[29] *People v. Bautista,* G.R. No. 177320, February 22, 2012, 666 SCRA 518, 529.

[30] *Rollo,* pp. 8-9.

THIRD DIVISION

[G.R. No. 208007. April 2, 2014]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **RODRIGO GUTIEREZ *y* ROBLES *alias* "ROD and JOHN LENNON",** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; STATUTORY RAPE; ELEMENTS.— Statutory rape is committed when (1) the offended party is under 12 years of age and (2) the accused has carnal knowledge of her, regardless of whether there was force, threat or intimidation; whether the victim was deprived of reason or consciousness; or whether it was done through fraud or grave abuse of authority. It is enough that the age of the victim is proven and that there was sexual intercourse. *People v. Teodoro* explained the elements of statutory rape committed under Article 266-A, paragraph (1) (d): Rape under paragraph 3 of this article is termed statutory rape as it departs from the usual modes of committing rape. What the law punishes in statutory rape is carnal knowledge of a woman below twelve (12) years old. Thus, force, intimidation and physical evidence of injury are not relevant considerations; *the only subject of inquiry is the age of the woman and whether carnal knowledge took place. The law presumes that the victim does not and cannot have a will of her own on account of her tender years; the child's consent is immaterial because of her presumed incapacity to discern good from evil.*

2. ID.; ID.; PENALTY AND PROPER DAMAGES.— Article 266-B of the Revised Penal Code requires that the penalty of *reclusion perpetua* shall be imposed in cases of rape stated in the first paragraph of Article 266-A where there are no aggravating or qualifying circumstances present. The lower courts correctly imposed this penalty. Their award of damages, however, must be modified in light of recent jurisprudence. **It is settled that the award of civil indemnity is mandatory upon a finding that rape was committed, along with the award or moral and exemplary damages.** x x x Due to the utter heinousness of the crime involved in this case, we,

therefore, exercise our judicial prerogative and increase the damages to ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages, and ₱100,000.00 as exemplary damages.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

D E C I S I O N

LEONEN, *J.*:

For a measly five- or ten-peso tip that a 10-year-old child would need for lunch money, a known acquaintance of their family would destroy a child's dignity by having illicit carnal knowledge of her. This case involves an act that is so dastardly that it is punished by Article 266-A of the Revised Penal Code as statutory rape which carries a sentence of *reclusion perpetua*.

We are asked to review the Court of Appeals decision[1] in CA-G.R. CR-HC No. 02955. This decision affirmed the conviction of the accused-appellant for statutory rape under Article 266-A of the Revised Penal Code and imposed the penalty of *reclusion perpetua*.

The facts of the case are as follows:

On November 30, 2005, an information[2] was filed against the accused-appellant before the Regional Trial Court of Baguio City, Branch 59. The information reads:

That on or about November 29, 2005, in the City of Baguio, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously have carnal knowledge of the offended party, (AAA), who is under twelve (12) years old.

Contrary to law.

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[1] *Rollo*, pp. 2-14.

[2] *Rollo*, Court of Appeals, p. 13.

Upon arraignment, Rodrigo Gutierez pleaded "not guilty." Trial on the merits ensued.

The prosecution presented the victim, AAA, who was then 10 years old and a Grade 2 student at Camp 7 Elementary School in Baguio City. She testified that on November 29, 2005, she went home from school at around 12 noon to have lunch.[3] On the way home, she met Rodrigo at his house. He brought her to his room and laid her down on the bed. He then raised her skirt and removed her panties. He pulled down his pants and then inserted his penis into her vagina.[4]

According to AAA, Rodrigo stayed on top of her for a long time, and when he withdrew his penis, white liquid came out. He then gave her five pesos (₱5.00) before she went back to school.[5]

AAA went back to school at about 2:10 p.m. Her adviser, Agustina Chapap, asked her where she came from because she was tardy. AAA initially did not answer. When asked again why she was tardy, AAA admitted she came from "Uncle Rod." She also admitted that she went there to ask for money. Chapap then brought AAA to Rona Ambaken, AAA's previous teacher. Together, they brought AAA to the principal's office. AAA was brought to the comfort room where Ambaken inspected her panties. The principal was able to confirm that AAA was touched since AAA's private organ was swelling. Her underwear was also wet.[6]

Another teacher, Jason Dalisdis, then brought AAA to Baguio General Hospital where her underwear was again inspected. Dr. Anvic Pascua also examined her. On the way to the hospital, Dalisdis passed by the *barangay* hall and the police station to report the incident.[7]

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[3] *Id.* at 45-46.

[4] *Id.* at 46.

[5] *Rollo*, p. 3.

[6] *Rollo*, Court of Appeals, p. 47.

[7] *Id.* at 48.

AAA also disclosed during trial that the accused-appellant had done the same thing to her about 10 times on separate occasions. After each act, he would give her ten (₱10.00) or five (₱5.00) pesos.[8]

The prosecution also presented Dr. Asuncion Ogues as an expert witness. Dr. Ogues was the superior of Dr. Pascua who examined AAA. Dr. Ogues testified based on the medical certificate issued by the examining physician that there was blunt force penetrating trauma that could have been caused by sexual abuse. She also stated that there was another medico-legal certificate issued by Dr. Carag, surgical resident of the Department of Surgery of Baguio General Hospital, showing findings of some hematoma in AAA's legs.[9]

In his defense, Rodrigo denied that AAA went to his house at 12 noon on November 29, 2005 and claimed he was already at work at 1:30 p.m. He has known AAA for a long time since his family rented the house of AAA's grandfather from 2001 to 2004.[10] When the police came and asked him if he knew AAA, he answered in the affirmative. He was then brought to Baguio General Hospital where he was told that AAA identified him as the one who raped her.[11]

Rodrigo admitted that he had a relationship with AAA's sister, and they even lived together as common-law spouses.[12] He also admitted that a similar complaint was filed against him by AAA's mother when AAA was eight years old, but they settled the case at the *barangay* level.[13]

On July 4, 2007, the trial court rendered a judgment[14] finding Rodrigo guilty beyond reasonable doubt of statutory rape and

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[8] *Rollo*, p. 4.

[9] *Rollo*, Court of Appeals, p. 49.

[10] *Id*. at 50.

[11] *Rollo*, p. 6.

[12] *Id*.

[13] *Id*. at 7.

[14] *Rollo*, Court of Appeals, pp. 44-57.

imposing on him the penalty of *reclusion perpetua*. He was additionally required to indemnify the offended party ₱50,000.00 moral damages and ₱25,000.00 exemplary damages with costs of suit.

Rodrigo appealed[15] to the Court of Appeals claiming that AAA's testimony fell short of the requirement of the law on the quantum of evidence required. He argued that she did not cry for help when her family's house was just nearby, which was cause for reasonable doubt that the trial court failed to appreciate.

On February 28, 2013, the Court of Appeals rendered a decision[16] affirming the conviction.

On March 11, 2013, Rodrigo filed a notice of appeal[17] with the appellate court, which was given due course in a resolution[18] dated March 15, 2013.

Hence, this appeal was instituted.

In the resolution[19] of September 9, 2013, this court required the parties to submit their respective supplemental briefs, if they so desired. Both parties, however, manifested that they were dispensing with the filing of a supplemental brief as their arguments were already substantially and exhaustively discussed in their respective briefs filed before the appellate court.

The only issue to be resolved by this court is whether the prosecution was able to prove beyond reasonable doubt that the accused-appellant was guilty of statutory rape punishable under Article 266-A of the Revised Penal Code.

Rape is defined in Article 266-A of the Revised Penal Code, which states:

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[15] *Id*. at 83-94.

[16] Per Tenth Division, penned by *J*. Gacutan, and concurred in by *J*. Lampas-Peralta and *J*. Acosta.

[17] *Rollo*, Court of Appeals, p. 159.

[18] *Id*. at 163.

[19] *Rollo*, p. 20.

Art. 266-A. Rape: When and How Committed. — Rape is committed:

1. By a man who shall have carnal knowledge of a woman under any of the following circumstances:
a. Through force, threat, or intimidation;
b. When the offended party is deprived of reason or otherwise unconscious;
c. By means of fraudulent machination or grave abuse of authority; and
d. When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.

x x x x x x x x x

Statutory rape is committed when (1) the offended party is under 12 years of age and (2) the accused has carnal knowledge of her, regardless of whether there was force, threat or intimidation; whether the victim was deprived of reason or consciousness; or whether it was done through fraud or grave abuse of authority. It is enough that the age of the victim is proven and that there was sexual intercourse.

People v. Teodoro[20] explained the elements of statutory rape committed under Article 266-A, paragraph (1) (d):

> Rape under paragraph 3 of this article is termed statutory rape as it departs from the usual modes of committing rape. What the law punishes in statutory rape is carnal knowledge of a woman below twelve (12) years old. Thus, force, intimidation and physical evidence of injury are not relevant considerations; *the only subject of inquiry is the age of the woman and whether carnal knowledge took place. The law presumes that the victim does not and cannot have a will of her own on account of her tender years; the child's consent is immaterial because of her presumed incapacity to discern good from evil.* (Emphasis supplied)

The defense did not dispute the fact that AAA was 10 years old at the time of the incident. Her birth certificate was presented

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[20] G.R. No. 175876, February 20, 2013, 691 SCRA 324 [Per *J.* Bersamin, First Division], also cited in *People v. Vergara*, G.R. No. 199226, January 15, 2014 [Per *J.* Leonardo-de Castro, First Division].

before the trial court.[21] What is critical in this case, therefore, is whether there is a showing that Rodrigo had carnal knowledge of AAA.

In the testimony of AAA, she narrated that on November 29, 2005, she met Rodrigo in his house, thus:

Q: Now, when you met the accused, what did he do?
A: He brought me in the room, Ma'am.

Q: The room is located inside his house?
A: Yes, Ma'am.

Q: And, was that the first time you entered the room?
A: (The witness nods.)

Q: After entering the room, what did Uncle Rod tell you?
A: He laid me down, Ma'am.

COURT:

Q: Where?
A: On the bed, Ma'am.

PROS. BERNABE:

Q: Who were the persons inside the room aside from you and Uncle Rod?
A: (Witness shook her head – meaning no persons around.)

Q: After lying down on the bed, what did he do next?
A: He raised up my skirt.

Q: After raising up your skirt, what else did he do?
A: He removed my panty, Ma'am.

Q: Was he able to remove it from your legs your panty? [sic]
A: No, Ma'am.

Q: Until where was he able to remove?
A: (Witness is pointing down to the ankle.)

Q: After pulling down your panty until your ankle, what happened?
A: He pulled down his short pants, Ma'am.

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[21] *See* Regional Trial Court judgment, p. 45.

Q: After pulling down his short pants, what did Uncle Rod do?
A: He brought out his penis.

Q: After bringing out his penis, what did he do next?
A: He inserted his penis to my vagina, Ma'am.

Q: Will you please show us where is your vagina?
A: (The witness stood and pointed to her private part.)

Q: You also mentioned AAA that Uncle Rod inserted his penis to your vagina, could you point to the "*ari*" of Ucle Rod?
A: (The witness pointed to a portion where the private part of the elder brother was standing.)

Q: Was it painful when Uncle Rod inserted his penis inside your vagina?
A: Yes, Ma'am.

Q: Did you cry when Uncle Rod inserted his penis inside your vagina?
A: Yes, Ma'am.

Q: Did he stay long on top of you? At around how many minutes?
A: Very long, Ma'am.

Q: Did he withdraw his penis from your vagina?
A: Yes, Ma'am.

Q: And after he withdrew his penis inside your vagina, what happened?
A: There is some white liquid that came out of his penis, Ma'am.[22]

As shown by her testimony, AAA was able to narrate in a clear and categorical manner the ordeal that was done to her. As a child-victim who has taken significant risks in coming to court, her testimony deserves full weight and credence. *People v. Veloso*[23] stated that:

In a litany of cases, this Court has ruled that the testimonies of child-victims of rape are to be given full weight and credence. Reason

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[22] TSN, June 22, 2006, pp. 9-11; *rollo*, pp. 9-11.

[23] G.R. No. 188849, February 13, 2013, 690 SCRA 586 [Per *J.* Leonardo-de Castro, First Division].

and experience dictate that a girl of tender years, who barely understands sex and sexuality, is unlikely to impute to any man a crime so serious as rape, if what she claims is not true. Her candid narration of how she was raped bears the earmarks of credibility, especially if no ill will—as in this case—motivates her to testify falsely against the accused. It is well-settled that when a woman, more so when she is a minor, says she has been raped, she says in effect all that is required to prove the ravishment. The accused may thus be convicted solely on her testimony—provided it is credible, natural, convincing and consistent with human nature and the normal course of things.[24]

AAA's ordeal was supported by the testimonies of her teachers whose concern for her led to the discovery of the crime. The medical certificate presented in court, together with the testimonies of the physicians, is consistent with the finding that she was sexually abused.

Rodrigo asserted that AAA's failure to cry out for help shows reasonable doubt. He noted that her house was just near his house where the incident happened.

This argument is so feeble that it could only have been put up out of desperation.

Rodrigo was referred to by the child-victim as "Uncle Rod." He admitted that AAA's family had known him for a long time. Rodrigo had the trust and respect that any elder in the family of AAA had. Instead of providing the moral guidance that his status allowed him, he took advantage of AAA's youthful innocence to satiate his illicit carnal desires. To cover this up and seemingly justify his actions, he gave his child-victim the measly sum of five pesos. Rodrigo knew that what he did was wrong; AAA would have probably doubted whether such act was normal among adults.

With his moral ascendancy, it would not be unreasonable to assume that even the child-victim's desire for help would be

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[24] *Id*. at 597, citing *People v. Salazar*, G.R. No. 181900, October 20, 2010, 634 SCRA 307, 318-319 [Per *J.* Velasco, Jr., First Division].

muffled by her fear of her "Uncle Rod." To a young 10-year-old, the ordinary world can be daunting. To be so young and silently aware that one is the victim of such callous depravation by Rodrigo, who she could have expected to take care of her, can create the kind of lasting fear that diminishes the development of her own person and her own convictions.

In any case, whether she cried for help is immaterial in a charge of statutory rape since "[t]he law presumes that such a victim, on account of her tender age, does not and cannot have a will of her own."[25]

Beyond reasonable doubt, Rodrigo Gutierez raped AAA, a minor who was only 10 years of age, on November 29, 2005.

Article 266-B of the Revised Penal Code requires that the penalty of *reclusion perpetua* shall be imposed in cases of rape stated in the first paragraph of Article 266-A where there are no aggravating or qualifying circumstances present. The lower courts correctly imposed this penalty.

Their award of damages, however, must be modified in light of recent jurisprudence.

It is settled that the award of civil indemnity is mandatory upon a finding that rape was committed, along with the award of moral and exemplary damages.[26] In *People v. Degay*,[27] the accused-appellant was found guilty of raping his nine-year-old neighbor. This court did not hesitate to increase the award of civil indemnity and moral damages from ₱50,000.00 to ₱75,000.00. In *People v. Gambao*,[28] we have also increased

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[25] *People v. Bagos*, G.R. No. 177152, January 6, 2010, 610 SCRA 1, 15 [Per *J.* Leonardo-de Castro, First Division], citing *People v. Malones*, 469 Phil. 301, 325-326 (2004) [Per *J.* Callejo, Sr., Second Division].

[26] See *People v. Teodoro*, G.R. No. 175876, February 20, 2013, 691 SCRA 324, 345-346 [Per *J.* Bersamin, First Division].

[27] G.R. No. 182526, August 25, 2010, 629 SCRA 409 [Per *J.* Perez, First Division].

[28] G.R. No. 172707, October 1, 2013 [Per *J.* Perez, *En Banc*].

the award of civil indemnity, moral damages, and exemplary damages to ₱100,000.00 each.

Due to the utter heinousness of the crime involved in this case, we, therefore, exercise our judicial prerogative and increase the damages to ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages, and ₱100,000.00 as exemplary damages.

There are not enough words to condemn the depravity that one adult can do to a child-victim. The many years that Rodrigo Gutierez will, by law, serve in prison will, of course, not make up for the wrong and the injury that he has so selfishly and callously caused and with utter disregard for what truly makes us human: that we care, nurture, and protect our children because we hope that they can make their world better than ours. All this was lost on Rodrigo Gutierez. The five pesos that he gave on every occasion that he defiled his child-victim simply underscores the ignominy of his act.

WHEREFORE, the decision of the Court of Appeals finding the accused-appellant Rodrigo Gutierez *y* Robles guilty beyond reasonable doubt of statutory rape is **AFFIRMED** with **MODIFICATION**. The accused-appellant is sentenced to *reclusion perpetua* and is ordered to pay AAA the amount of ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages, and ₱100,000.00 as exemplary damages, with an interest of 6% per annum from the finality of this decision until its full satisfaction.

SO ORDERED.

Velasco, Jr. (Chairperson), Abad, Reyes,[*] and *Perlas-Bernabe,*[**] *JJ.,* concur.

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[*] Justice Bienvenido L. Reyes was designated as Acting Member of the Third Division, vice Justice Diosdado M. Peralta per raffle dated August 5, 2013.

[**] Associate Justice Estela M. Perlas-Bernabe was designated as Acting Member of the Third Division, vice Associate Justice Jose Catral Mendoza, per Special Order No. 1656 dated March 27, 2014.

FIRST DIVISION

[A.M. No. MTJ-12-1806. April 7, 2014]
(Formerly A.M. No. 11-4-36-MTCC)

OFFICE OF THE COURT ADMINISTRATOR, *complainant, vs.* **JUDGE BORROMEO R. BUSTAMANTE, MUNICIPAL TRIAL COURT IN CITIES, ALAMINOS CITY, PANGASINAN,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; JUDGES; DUTY TO DECIDE CASES WITHIN 90 DAYS FROM SUBMISSION.— Decision-making, among other duties, is the primordial and most important duty of a member of the bench. The speedy disposition of cases in the courts is a primary aim of the judiciary so the ends of justice may not be compromised and the judiciary will be true to its commitment to provide litigants their constitutional right to a speedy trial and a speedy disposition of their cases. The Constitution, Code of Judicial Conduct, and jurisprudence consistently mandate that a judge must decide cases within 90 days from submission. x x x This Court has always emphasized the need for judges to decide cases within the constitutionally prescribed 90-day period. Any delay in the administration of justice, no matter how brief, deprives the litigant of his right to a speedy disposition of his case. Not only does it magnify the cost of seeking justice, it undermines the people's faith and confidence in the judiciary, lowers its standards, and brings it to disrepute.

2. ID.; ID.; ID.; ID.; EXTENSION OF TIME MAY BE REQUESTED IF UNABLE TO COMPLY THEREWITH.— A member of the bench cannot pay mere lip service to the 90-day requirement; he/she should instead persevere in its implementation. Heavy caseload and demanding workload are not valid reasons to fall behind the mandatory period for disposition of cases. The Court usually allows reasonable extensions of time to decide cases in view of the heavy caseload of the trial courts. If a judge is unable to comply with the 90-day reglementary period for deciding cases or matters, he/she can, for good reasons, ask for an extension and such request is generally granted.

3. ID.; ID.; ID.; ID.; NONCOMPLIANCE; CANNOT BE EXCUSED BY LACK OF TRANSCRIPT OF STENOGRAPHIC NOTES.— [U]nacceptable for the Court is Judge Bustamante's explanation that he failed to decide Civil Case Nos. 1937 and 2056 because of the lack of Transcript of Stenographic Notes (TSN). x x x Relevant herein is the ruling of the Court in *Re: Problem of Delays in Cases Before the Sandiganbayan*: x x x **Lack of transcript of stenographic notes shall not be a valid reason to interrupt or suspend the period for deciding the case unless the case was previously heard by another judge not the deciding judge in which case the latter shall have the full period of ninety (90) days from the completion of the transcripts within which to decide the same.** x x x

4. ID.; ID.; ID.; ID.; ID.; CANNOT BE EXCUSED BY OVERSIGHT.— Least acceptable of Judge Bustamante's explanations for his delay in deciding cases and/or resolving pending incidents was oversight. A judge is responsible, not only for the dispensation of justice but also for managing his court efficiently to ensure the prompt delivery of court services. Since he is the one directly responsible for the proper discharge of his official functions, he should know the cases submitted to him for decision or resolution, especially those pending for more than 90 days.

5. ID.; ID.; ID.; UNDUE DELAY IN RENDERING DECISION; PROPER PENALTY IN CASE AT BAR.— Under the amendments to Rule 140 of the Rules of Court, undue delay in rendering a decision or order is a less serious charge, for which the respondent judge shall be penalized with either (a) suspension from office without salary and other benefits for not less than one nor more than three months; or (b) a fine of more than ₱10,000.00, but not more than ₱20,000.00. Considering the significant number of cases and pending incidents left undecided/unresolved or decided/resolved beyond the reglementary period by Judge Bustamante; as well as the fact that Judge Bustamante had already retired and can no longer be dismissed or suspended, it is appropriate to impose upon him a penalty of a fine amounting to ₱20,000.00, to be deducted from his retirement benefits.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

The present administrative matter arose from the judicial audit of the Municipal Trial Court in Cities (MTCC) of Alaminos City, Pangasinan, then presided by Judge Borromeo R. Bustamante (Bustamante). Judge Bustamante retired on November 6, 2010.

Considering the impending retirement of Judge Bustamante, a judicial audit of the MTCC was conducted on September 21, 2010 by a team from the Office of the Court Administrator (OCA). In a Memorandum[1] dated October 6, 2010, Deputy Court Administrator (DCA) Raul Bautista Villanueva (Villanueva) informed Judge Bustamante of the initial audit findings that, as of audit date, there were 35 cases for decision (21 of which were already beyond the reglementary period) and 23 cases with pending incidents for resolution (19 of which were already beyond the reglementary period) in Judge Bustamante's court. At the end of his Memorandum, DCA Villanueva gave Judge Bustamante the following directives:

1. Explain in writing within fifteen (15) days from receipt hereof your failure to: [a] decide within the reglementary period Civil Case Nos. 1847, 1870, 1937, 1978, 2056 and 2205, LRC Nos. 28, 65 and 70, and Criminal Case Nos. 5428, 6468, 6469, 6558, 7222, 7721, 8163, 8390, 8395, 8654, 9022 and 9288; and, [b] resolve the incidents in Civil Case Nos. 1668 and 2132, Criminal Case Nos. 8004, 8005, 8006, 8580, 9015, 9016, 9190, 9191, 9196, 9232 and 9235;

2. DECIDE with dispatch the cases enumerated in item (I) above, and to SUBMIT copies of the decisions to this Office within three (3) days after your compulsory retirement; and

3. RESOLVE with dispatch the incidents for resolution in the cases enumerated in item (II) above, and to SUBMIT copies of the resolution to this Office within the same period indicated in the immediately preceding paragraph.[2]

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[1] *Rollo,* pp. 1-5.

[2] *Id.* at 5.

Judge Bustamante submitted a letter[3] dated November 8, 2010,[4] addressed to DCA Villanueva, in which he explained:

I have the honor to inform you that I have decided all the cases, Civil, LRC and Criminal Cases submitted before my last day in office on November 5, 2010 except Civil Cases Nos. 1937 (*Bustillo vs. Sps. Rabago*) and 2056 (*Cale vs. Pader, et al.*) because of lack of TSN taken when I was not yet the Presiding Judge. I found out that there is [a] need to retake the testimonies of the witness concerned so as to attain substantial justice.

As to why I failed to decide the said cases within the reglementary period, it was because of the volume of work in this court. As it was noticed by the Auditors when they came over to audit, I have already started deciding with drafts attached to the records but I was overtaken by more pressing matters that I have to take immediate attention, like urgent motions, motions to dismiss, motions to quash, approval of bails. All of these are in addition to my trial duties.

I have to work as early as 7:30 o'clock in the morning, and sometimes at 7:00 o'clock, with the desire to finish everything on time. I burned my candle at night just [to] comply with my duties within the time frame but because of human frailties, I failed to do so on time because as I said[,] of the volume of work in this court. But nonetheless I have decided all the cases submitted for decision before I retired except, as above stated, Civil Cases Nos. 1737 and 2056 because of the reasons already stated.

Judge Bustamante further accounted for the cases with incidents for resolution, as follows:

In Civil Cases, I have resolved the demurrer to evidence in Civil Cases Nos. 1668 and 2132. However, the motion to dismiss by defendant Celeste in Civil Case No. 2222, considering the opposition of the plaintiff because of their counterclaim, I believed the motion needs further hearing, hence, the motion was not resolved. Similarly, the motion to dismiss in Civil Case No. 2254 needs further hearing, and if no order setting the motion for hearing, it may be an oversight

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[3] *Id.* at 6-7.

[4] The letter was dated November 8, 2010 at the beginning, but dated November 11, 2010 at the end.

because of the submission of several cases for decision almost at the same time.

In Criminal Cases, I have resolved the demurrer to evidence in Crim. Cases Nos. 9015 & 9016 (*People vs. Paltep vda. de Perio*) and Crim. Cases Nos. 9148 & 9149 (*People vs. Anselmo, Jr.*) while Crim. Case No. 9196 was set for further hearing.

On the motion to suspend proceedings in Crim. Cases Nos. 9190 & 9191, it may have been an oversight because these cases are the off-shoots of Civil Case No. 2222 and pre-trial conference for the marking of documentary evidence has been subsequently set but the counsel for the accused failed to appear.

The motion to dismiss in Crim. Cases Nos. 8615, 8616 & 8617, was not resolved because of the prayer of the parties in open court for them to await the resolution of the civil cases they filed before the Regional Trial Court, as they are working for the settlement of these civil cases, which may have [an] effect in these cases.

The other incidents were set for hearing so that the court could judiciously resolve the matter.[5]

In support of his compliance, Judge Bustamante submitted to the OCA copies of the decisions and resolutions he referred to in his letter.

The OCA submitted to the Court its Memorandum[6] dated March 24, 2011, reporting *viz*:

(1) Judge Bustamante had decided 33 out of the 35 cases for decision in his court. Of the 33 cases decided by Judge Bustamante, 13 were still within the reglementary period while 20 were already beyond the reglementary period. Of the 20 cases Judge Bustamante had decided beyond the reglementary period, 10 were decided more than a year after their respective due dates (ranging from 1 year and 8 days to 4 years and 7 months beyond the due dates) and 10 were decided within a year after their respective due dates (ranging from 5 days to 6 months beyond the due dates).

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[5] *Rollo*, p. 7.

[6] *Id*. at 337-348.

(2) Judge Bustamante had also resolved 6 out of the 23 cases with pending incidents in his court, all of which were resolved beyond their respective reglementary periods (ranging from 5 days to 3 years, 8 months, and 16 days after the due dates). As for the 17 other cases with pending incidents in his court, Judge Bustamante reasoned that (a) the motions require further hearing; (b) there is a need to await the resolution of other cases pending before other courts; and (c) oversight. The OCA noted, though, that Judge Bustamante failed to submit any order setting the pending incidents for hearing or holding in abeyance the resolution of the same until the related cases before other courts have already been decided.

Unconvinced by Judge Bustamante's explanations/reasons for his delay in deciding cases and resolving pending incidents, the OCA recommended that:

> PREMISES CONSIDERED, we respectfully recommend that retired Judge Borromeo R. Bustamante, formerly of the Municipal Trial Court in Cities, Alaminos City, Pangasinan, be FINED in the amount of ₱20,000.00 for gross inefficiency.

In a Resolution[7] dated February 8, 2012, the case was re-docketed as a regular administrative matter.

Judge Bustamante wrote the Court a letter dated July 3, 2013, stating that although he already retired from the service on November 6, 2010, he has yet to receive his retirement benefits (except for his accumulated leave credits), because of the pendency of the instant administrative matter against him. Consequently, Judge Bustamante prayed that the administrative matter be resolved soonest so he could already receive his retirement benefits or that his retirement benefits be released but a certain amount commensurate to the fine that the Court might impose be withheld.

The Court agrees with the findings and recommendation of the OCA.

Decision-making, among other duties, is the primordial and most important duty of a member of the bench. The speedy

[7] *Id*. at 351.

disposition of cases in the courts is a primary aim of the judiciary so the ends of justice may not be compromised and the judiciary will be true to its commitment to provide litigants their constitutional right to a speedy trial and a speedy disposition of their cases.[8]

The Constitution, Code of Judicial Conduct, and jurisprudence consistently mandate that a judge must decide cases within 90 days from submission. As the Court summed up in *Re: Report on the Judicial Audit Conducted in the RTC, Br. 4, Dolores, Eastern Samar*:[9]

> Section 15, Article VIII of the Constitution states that judges must decide all cases *within three months* from the date of submission. In *Re: Report on the Judicial Audit Conducted at the Municipal Trial Court in Cities (Branch 1), Surigao City*, the Court held that:
>
> > A judge is mandated to render a decision not more than 90 days from the time a case is submitted for decision. Judges are to dispose of the court's business promptly and decide cases within the period specified in the Constitution, that is, 3 months from the filing of the last pleading, brief or memorandum. Failure to observe said rule constitutes a ground for administrative sanction against the defaulting judge, absent sufficient justification for his non-compliance therewith.
>
> Rule 1.02, Canon 1 of the Code of Judicial Conduct states that judges should administer justice *without delay*. Rule 3.05 of Canon 3 states that judges shall dispose of the court's business *promptly* and decide cases *within the required periods*. In *Office of the Court Administrator v. Javellana*, the Court held that:
>
> > A judge cannot choose his deadline for deciding cases pending before him. Without an extension granted by this Court, the failure to decide even a single case within the required period constitutes gross inefficiency that merits administrative sanction.
>
> **The Code of Judicial Conduct, specifically Canon 3, Rule 3.05 mandates judges to attend promptly to the business of**

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[8] *Re: Report on the Judicial Audit and Physical Inventory of Cases in the RTC, Br. 54, Bacolod City*, 537 Phil. 1, 13 (2006).

[9] 562 Phil. 301, 313-314 (2007).

> **the court and decide cases within the periods prescribed by law and the Rules.** Under the 1987 Constitution, lower court judges are also mandated to decide cases within 90 days from submission.
>
> **Judges must closely adhere to the Code of Judicial Conduct** in order to preserve the integrity, competence and independence of the judiciary and make the administration of justice more efficient. **Time and again, we have stressed the need to strictly observe this duty so as not to negate our efforts to minimize, if not totally eradicate, the twin problems of congestion and delay that have long plagued our courts.**
>
> In *Office of the Court Administrator v. Garcia-Blanco*, the Court held that the 90-day reglementary period is *mandatory*. Failure to decide cases within the reglementary period constitutes a ground for administrative liability except when there are valid reasons for the delay. (Citation omitted.)

This Court has always emphasized the need for judges to decide cases within the constitutionally prescribed 90-day period. Any delay in the administration of justice, no matter how brief, deprives the litigant of his right to a speedy disposition of his case. Not only does it magnify the cost of seeking justice, it undermines the people's faith and confidence in the judiciary, lowers its standards, and brings it to disrepute.[10]

A member of the bench cannot pay mere lip service to the 90-day requirement; he/she should instead persevere in its implementation.[11] Heavy caseload and demanding workload are not valid reasons to fall behind the mandatory period for disposition of cases.[12] The Court usually allows reasonable extensions of time to decide cases in view of the heavy caseload of the trial courts. If a judge is unable to comply with the 90-

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[10] *Office of the Court Administrator v. Garcia-Blanco*,522 Phil. 87, 99 (2006).

[11] *Office of the Court Administrator v. Bagundang*, 566 Phil. 149, 157-158 (2008).

[12] *Office of the Court Administrator v. Santos*, A.M. No. MTJ-11-1787 (Formerly A.M. No. 08-5-146-MeTC), October 11, 2012, 684 SCRA 1, 10.

day reglementary period for deciding cases or matters, he/she can, for good reasons, ask for an extension and such request is generally granted.[13] But Judge Bustamante did not ask for an extension in any of these cases. Having failed to decide a case within the required period, without any order of extension granted by the Court, Judge Bustamante is liable for undue delay that merits administrative sanction.

Equally unacceptable for the Court is Judge Bustamante's explanation that he failed to decide Civil Case Nos. 1937 and 2056 because of the lack of Transcript of Stenographic Notes (TSN). These two cases were allegedly heard when he was not yet the presiding judge of the MTCC. Relevant herein is the ruling of the Court in *Re: Problem of Delays in Cases Before the Sandiganbayan*:[14]

> The Constitution provides that a case shall be deemed submitted for decision or resolution upon the filing of the last pleading, brief, or memorandum required by the Rules of Court or by the court itself. In Administrative Circular No. 28, dated July 3, 1989, the Supreme Court provided that "A case is considered submitted for decision upon the admission of the evidence of the parties at the termination of the trial. The ninety (90) days period for deciding the case shall commence to run from submission of the case for decision without memoranda; in case the court requires or allows its filing, the case shall be considered submitted for decision upon the filing of the last memorandum or the expiration of the period to do so, whichever is earlier. **Lack of transcript of stenographic notes shall not be a valid reason to interrupt or suspend the period for deciding the case unless the case was previously heard by another judge not the deciding judge in which case the latter shall have the full period of ninety (90) days from the completion of the transcripts within which to decide the same.**" x x x (Emphasis supplied, citations omitted.)

The OCA reported that contrary to his claim, Judge Bustamante substantially heard Civil Case Nos. 1937 and 2056, until the two cases were submitted for decision on November 20, 2009

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[13] *Tan v. Judge Estoconing*, 500 Phil. 392, 400-401 (2005).

[14] 422 Phil. 246, 286-287 (2001).

and February 27, 2010, respectively. Even if it were true that the two cases were heard by the previous presiding judge of the MTCC, there is no showing that from the time the cases had been submitted for decision until Judge Bustamante's retirement on November 6, 2010, Judge Bustamante made an effort to have the TSN completed. Although technically, the 90-day period would have started to run only upon the completion of the TSN, the Court finds Judge Bustamante's lack of effort to have the TSN completed as the root cause for the delay in deciding the two cases.

The Court is likewise unconvinced that the pending incidents in several cases were left unresolved because of the need for further hearings in the same. The incidents were already submitted for resolution and, as the OCA observed, Judge Bustamante only saw the need for further hearings in said cases after the conduct of the judicial audit. In addition, Judge Bustamante did not submit any order setting the cases for hearing.

Least acceptable of Judge Bustamante's explanations for his delay in deciding cases and/or resolving pending incidents was oversight. A judge is responsible, not only for the dispensation of justice but also for managing his court efficiently to ensure the prompt delivery of court services. Since he is the one directly responsible for the proper discharge of his official functions, he should know the cases submitted to him for decision or resolution, especially those pending for more than 90 days.[15]

There is no dispute that Judge Bustamante failed to decide cases and resolve pending incidents within the reglementary period, and without authorized extension from the Court and valid reason for such failure, Judge Bustamante is administratively liable for undue delay in rendering a decision or order.

Under the amendments to Rule 140[16] of the Rules of Court, undue delay in rendering a decision or order is a less serious

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[15] *Office of the Court Administrator v. Doyon*, 592 Phil. 235, 247 (2008).

[16] Section 9(1) in relation to Section 11(B) of *En Banc* Resolution in A.M. No. 01-8-10-SC dated September 11, 2001 (Re: Proposed Amendment to Rule 140 of the Rules of Court Regarding the Discipline of Justices and Judges).

charge, for which the respondent judge shall be penalized with either (a) suspension from office without salary and other benefits for not less than one nor more than three months; or (b) a fine of more than ₱10,000.00, but not more than ₱20,000.00.

Considering the significant number of cases and pending incidents left undecided/unresolved or decided/resolved beyond the reglementary period by Judge Bustamante; as well as the fact that Judge Bustamante had already retired and can no longer be dismissed or suspended, it is appropriate to impose upon him a penalty of a fine amounting to ₱20,000.00, to be deducted from his retirement benefits.

WHEREFORE, the Court finds retired Judge Borromeo R. Bustamante, former Presiding Judge of the Municipal Trial Court in Cities, Alaminos City, Pangasinan, **GUILTY** of undue delay in rendering decisions and orders, and imposes upon him a **FINE** of ₱20,000.00, to be deducted from his retirement benefits.

SO ORDERED.

Sereno, C.J. (Chairperson), Bersamin, Villarama, Jr., and *Reyes, JJ.,* concur.

FIRST DIVISION

[G.R. No. 170007. April 7, 2014]

TABANGAO SHELL REFINERY EMPLOYEES ASSOCIATION, *petitioner, vs.* PILIPINAS SHELL PETROLEUM CORPORATION, *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; BARRED BY *RES JUDICATA* IN THE CONCEPT OF

CONCLUSIVENESS OF JUDGMENT; CASE AT BAR.— The petition is barred by *res judicata* in the concept of conclusiveness of judgment. The concept of conclusiveness of judgment is explained in *Nabus v. Court of Appeals* as follows: The doctrine states that a fact or question which was in issue in a former suit, and was there judicially passed on and determined by a court of competent jurisdiction, is conclusively settled by the judgment therein, as far as concerns the parties to that action and persons in privity with them, and cannot be again litigated in any future action between such parties or their privies, in the same court or any other court of concurrent jurisdiction on either the same or a different cause of action, while the judgment remains unreversed or unvacated by proper authority. The only identities thus required for the operation of the judgment as an estoppel x x x are identity of parties and identity of issues. It has been held that in order that a judgment in one action can be conclusive as to a particular matter in another action between the same parties or their privies, it is essential that the issues be identical. If a particular point or question is in issue in the second action, and the judgment will depend on the determination of that particular point or question, a former judgment between the same parties [or their privies] will be final and conclusive in the second if that same point or question was in issue and adjudicated in the first suit[.] x x x. The Decision dated June 8, 2005 of the Secretary of Labor and Employment in the labor dispute over which he assumed jurisdiction, OSEC-AJ-0033-04/NCMB-RBIV-LAG-NS-09-048-04/NCMB-RBIV-LAG-NS-02-004-05, has long attained finality. The union never denied this. In this connection, Article 263(i) of the Labor Code is clear: ART. 263. *Strikes, picketing, and lockouts.* – x x x (i) The Secretary of Labor and Employment, the Commission or the voluntary arbitrator shall decide or resolve the dispute within thirty (30) calendar days from the date of the assumption of jurisdiction or the certification or submission of the dispute, as the case may be. **The decision of** the President, **the Secretary of Labor and Employment**, the Commission or the voluntary arbitrator **shall be final and executory ten (10) calendar days after receipt thereof by the parties**. Pursuant to Article 263(i) of the Labor Code, therefore, the Decision dated June 8, 2005 of the Secretary of Labor and Employment became final and executory after the lapse of the period provided under the said

provision. Moreover, neither party further questioned the Decision dated June 8, 2005 of the Secretary of Labor and Employment. The Decision dated June 8, 2005 of the Secretary of Labor and Employment already considered and ruled upon the issues being raised by the union in this petition. In particular, the said Decision already passed upon the issue of whether there was already an existing deadlock between the union and the company when the Secretary of Labor and Employment assumed jurisdiction over their labor dispute. The said Decision also answered the issue of whether the company was guilty of bargaining in bad faith. As the Decision dated June 8, 2005 of the Secretary of Labor and Employment already settled the said issues with finality, the union cannot once again raise those issues in this Court through this petition without violating the principle of *res judicata*, particularly in the concept of conclusiveness of judgment.

2. ID.; ID.; ID.; QUESTION OF FACT, NOT PROPER; CASE AT BAR.— A question of fact cannot properly be raised in a petition for review under Rule 45 of the Rules of Court. x x x The existence of bad faith is a question of fact and is evidentiary. The crucial question of whether or not a party has met his statutory duty to bargain in good faith typically turns on the facts of the individual case, and good faith or bad faith is an inference to be drawn from the facts. x x x The issue of whether there was already deadlock between the union and the company is likewise a question of fact. It requires the determination of evidence to find whether there is a "counteraction" of forces between the union and the company and whether each of the parties exerted "reasonable effort at good faith bargaining."

3. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; COLLECTIVE BARGAINING AGREEMENT; DEADLOCK, DEFINED.— A deadlock is defined as follows: A 'deadlock' is x x x the counteraction of things producing entire stoppage; x x x There is a deadlock when there is a complete blocking or stoppage resulting from the action of equal and opposed forces x x x. The word is synonymous with the word impasse, which x x x 'presupposes reasonable effort at good faith bargaining which, despite noble intentions, does not conclude in agreement between the parties.'

4. ID.; ID.; ID.; DUTY TO BARGAIN DOES NOT COMPEL ANY PARTY TO ACCEPT A PROPOSAL OR MAKE ANY CONCESSION.— The final and executory Decision dated June 8, 2005 of the Secretary of Labor and Employment squarely addressed the contention of the union that the company was guilty of bargaining in bad faith. The said Decision correctly characterized the nature of the duty to bargain, that is, it does not compel any party to accept a proposal or to make any concession. While the purpose of collective bargaining is the reaching of an agreement between the employer and the employee's union resulting in a binding contract between the parties, the failure to reach an agreement after negotiations continued for a reasonable period does not mean lack of good faith. The laws invite and contemplate a collective bargaining contract but do not compel one. For after all, a CBA, like any contract is a product of mutual consent and not of compulsion. As such, the duty to bargain does not include the obligation to reach an agreement.

5. ID.; ID.; LABOR DISPUTE; DETERMINATION THEREOF; NOTICE OF STRIKE, WHILE SIGNIFICANT IS NOT THE SOLE CRITERION.— While the first Notice of Strike is indeed significant in the determination of the existing labor dispute between the parties, it is not the sole criterion. As this Court explained in *Union of Filipro Employees-Drug, Food and Allied Industries Unions-Kilusang Mayo Uno v. Nestle Philippines, Inc.*: The Secretary of the DOLE has been explicitly granted by Article 263(g) of the Labor Code the authority to assume jurisdiction over a labor dispute causing or likely to cause a strike or lockout in an industry indispensable to the national interest, and decide the same accordingly. And, **as a matter of necessity, it includes questions incidental to the labor dispute; that is, issues that are necessarily involved in the dispute itself, and not just to that ascribed in the Notice of Strike or otherwise submitted to him for resolution**. x x x The totality of the company's Petition for Assumption of Jurisdiction, including every allegation therein, also guided the Secretary of Labor and Employment in the proper determination of the labor dispute over which he or she was being asked to assume jurisdiction.

6. ID.; ID.; ID.; DEFINITION.— A "labor dispute" is defined under Article 212(l) of the Labor Code as follows: ART. 212.

Definitions. – x x x (l) "Labor dispute" includes any controversy or matter concerning terms or conditions of employment or the association or representation of persons in negotiating, fixing, maintaining, changing or arranging the terms and conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee. In this case, there was a dispute, an unresolved issue on several matters, between the union and the company in the course of the negotiations for a new CBA.

7. ID.; ID.; ID.; POWER OF THE SECRETARY OF LABOR AND EMPLOYMENT TO ASSUME JURISDICTION; ELABORATED.— [T]he labor dispute between the union and the company concerned the unresolved matters between the parties in relation to their negotiations for a new CBA. The power of the Secretary of Labor and Employment to assume jurisdiction over this dispute includes and extends to all questions and controversies arising from the said dispute, such as, but not limited to the union's allegation of bad faith bargaining. It also includes and extends to the various unresolved provisions of the new CBA such as compensation, particularly the matter of annual wage increase or yearly lump sum payment in lieu of such wage increase, whether or not there was deadlock in the negotiations. x x x As there is already an existing controversy on the matter of wage increase, the Secretary of Labor and Employment need not wait for a deadlock in the negotiations to take cognizance of the matter. That is the significance of the power of the Secretary of Labor and Employment under Article 263(g) of the Labor Code to assume jurisdiction over a labor dispute causing or likely to cause a strike or lockout in an industry indispensable to the national interest.

APPEARANCES OF COUNSEL

Emmanuel Reyes Matibog for petitioner.
Angara Abello Concepcion Regala and Cruz for respondent.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

This an appeal from the Decision[1] dated August 8, 2005 of the Court of Appeals in CA-G.R. SP No. 88178 dismissing the petition for *certiorari* of the petitioner Tabangao Shell Refinery Employees Association.

The origins of the controversy

In anticipation of the expiration on April 30, 2004 of the 2001-2004 Collective Bargaining Agreement (CBA) between the petitioner and the respondent Pilipinas Shell Petroleum Corporation, the parties started negotiations for a new CBA. After several meetings on the ground rules that would govern the negotiations and on political items, the parties started their discussion on the economic items on July 27, 2004, their 31st meeting. The union proposed a 20% annual across-the-board basic salary increase for the next three years that would be covered by the new CBA. In lieu of the annual salary increases, the company made a counter-proposal to grant all covered employees a lump sum amount of ₱80,000.00 yearly for the three-year period of the new CBA.[2]

The union requested the company to present its counter-proposal in full detail, similar to the presentation by the union of its economic proposal. The company explained that the lump sum amount was based on its affordability for the corporation, the then current salary levels of the members of the union relative to the industry, and the then current total pay and benefits package of the employees. Not satisfied with the company's explanation, the union asked for further justification of the lump sum amount offered by the company. When the company refused to acknowledge any obligation to give further justification, the union rejected the company's counter-proposal and maintained

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[1] *Rollo*, pp. 52-63; penned by Associate Justice Renato C. Dacudao with Associate Justices Edgardo F. Sundiam and Japar B. Dimaampao, concurring.

[2] *Id*. at 53.

its proposal for a 20% annual increase in basic pay for the next three years.[3]

On the 39th meeting of the parties on August 24, 2004, the union lowered its proposal to 12% annual across-the-board increase for the next three years. For its part, the company increased its counter-proposal to a yearly lump sum payment of ₱88,000.00 for the next three years. The union requested financial data for the manufacturing class of business in the Philippines. It also requested justification for the company's counter-offer. In response, the company stated that financial measures for Tabangao were available in the refinery scorecard regularly cascaded by the management to the employees. The company reiterated that its counter-offer is based on its affordability for the company, comparison with the then existing wage levels of allied industry, and the then existing total pay and benefits package of the employees. The company subsequently provided the union with a copy of the company's audited financial statements.[4]

However, the union remained unconvinced and asked for additional documents to justify the company's counter-offer. The company invited the attention of the union to the fact that additional data, such as the refinery performance scorecard, were available from the refinery's website and shared network drives. The company also declared that the bases of its counter-offer were already presented to the union and contained in the minutes of previous meetings. The union thereafter requested for a copy of the comparison of the salaries of its members and those from allied industries. The company denied the request on the ground that the requested information was entrusted to the company under a confidential agreement. Alleging failure on the part of the company to justify its offer, the union manifested that the company was bargaining in bad faith.[5] The company, in turn, expressed its disagreement with the union's manifestation.[6]

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[3] *Id*.

[4] *Id*. at 54.

[5] *Id*.

[6] *Id*. at 163.

On the parties' 41st meeting held on September 2, 2004, the company proposed the declaration of a deadlock and recommended that the help of a third party be sought. The union replied that they would formally answer the proposal of the company a day after the signing of the official minutes of the meeting. On that same day, however, the union filed a Notice of Strike in the National Conciliation and Mediation Board (NCMB), alleging bad faith bargaining on the part of the company. The NCMB immediately summoned the parties for the mandatory conciliation-mediation proceedings but the parties failed to reach an amicable settlement.[7]

Assumption of Jurisdiction by the Secretary of Labor and Employment

On September 16, 2004, during the cooling off period, the union conducted the necessary strike vote. The members of the union, who participated in the voting, unanimously voted for the holding of a strike. Upon being aware of this development, the company filed a Petition for Assumption of Jurisdiction with the Secretary of Labor and Employment.[8] The petition was filed pursuant to the first paragraph of Article 263(g) of the Labor Code which provides:

> ART. 263. *Strikes, picketing, and lockouts.* – x x x
>
> x x x x x x x x x
>
> (g) When, in his opinion, there exists a labor dispute causing or likely to cause a strike or lockout in an industry indispensable to the national interest, the Secretary of Labor and Employment may assume jurisdiction over the dispute and decide it or certify the same to the Commission for compulsory arbitration. Such assumption or certification shall have the effect of automatically enjoining the intended or impending strike or lockout as specified in the assumption or certification order. If one has already taken place at the time of assumption or certification, all striking or locked out employees shall immediately return to work and the employer

[7] *Id.* at 54-55.

[8] *Id.* at 55.

shall immediately resume operations and readmit all workers under the same terms and conditions prevailing before the strike or lockout. The Secretary of Labor and Employment or the Commission may seek the assistance of law enforcement agencies to ensure the compliance with this provision as well as with such orders as he may issue to enforce the same.

The company's petition for assumption of jurisdiction was docketed as OSEC-AJ-0033-04/NCMB-RBIV-LAG-NS-09-048-04.

In an Order[9] dated September 20, 2004, the then Secretary of Labor and Employment, Patricia Sto. Tomas, granted the petition of the company. The Secretary of Labor and Employment took notice of the Notice of Strike filed by the union in the NCMB which charged the company with unfair labor practice consisting of bad faith in bargaining negotiations. The Secretary of Labor and Employment also found that the intended strike would likely affect the company's capacity to provide petroleum products to the company's various clientele, including the transportation sector, the energy sector, and the manufacturing and industrial sectors. The Secretary of Labor and Employment further observed that a strike by the union would certainly have a negative impact on the price of commodities. Convinced that such a strike would have adverse consequences on the national economy, the Secretary of Labor and Employment ruled that the labor dispute between the parties would cause or likely to cause a strike in an industry indispensable to the national interest. Thus, the Secretary of Labor and Employment assumed jurisdiction over the dispute of the parties. The dispositive portion of the Order dated September 20, 2004 reads:

WHEREFORE, considering the foregoing premises, this Office hereby **assumes jurisdiction** over the labor dispute between the **TABANGAO SHELL REFINERY EMPLOYEES ASSOCIATION** and the **PILIPINAS SHELL PETROLEUM CORPORATION**, pursuant to Article 263 (g) of the Labor Code, as amended.

Accordingly, any form of concerted action, whether actual or intended, is hereby enjoined. Parties are directed to maintain the

[9] *Id*. at 168-172.

status quo existing at the time of service of this Order. They are also ordered not to commit any act that may exacerbate the situation.

However, if at the time of service of this Order a strike has already commenced, the employees are directed to immediately return to work within twenty-four (24) hours from receipt thereof. In such case[,] the employer shall, without unnecessary delay, resume operations and readmit all workers under the same terms and conditions prevailing before the strike.

To expedite the resolution of this dispute, the parties are directed to submit in three [3] copies, their respective Position Paper on the economic issues and those raised in the Notice of Strike, docketed as NCMB-RBIV-LAG-NS-09-048-04. It must be submitted **personally** to this Office **within seven [7] calendar days** from receipt of this Order. Another **three [3] calendar days** from receipt of the other party's position paper shall be allowed for the personal filing or submission of their respective Comment and Reply thereon. Service of position papers together with annexes, affidavits and other papers accompanying the same should be done personally. If service by registered mail cannot be avoided, it should follow the mandate of Article 263 of the Labor Code and shall be deemed complete upon the expiration of **five (5) calendar days** from mailing. After said period[,] the allowed time for filing of Reply shall start, after which, the case shall be deemed submitted for resolution.

The Company is ordered to attach the following documents to its position paper, to assist this Office in the prompt resolution of this case:

a] Complete Audited Financial Statements for the past five [5] years certified as to its completeness by the Chief Financial Comptroller or Accountant, as the case may be[;]

SEC stamped COMPLETE audited Financial Statements shall include the following:

1. Independent Auditor's opinion
2. Comparative Balance Sheet
3. Comparative Income Statement
4. Comparative Cash Flows
5. Notes to the Financial Statements as required by SEC

b] Projected Financial Statements of the Company FOR THE NEXT THREE [3] YEARS (Balance Sheets, Income Statements,

Cash Flow, and Appropriate notes to such projected [F]inancial Statements);

c] CBA history as to all the economic issues;

d] Cost estimates of its *final* offer on the specific CBA issues;

e] A separate itemized summary of the Management Offer and the Union demands with [the] following format:

Description of Demands	Existing CBA	Union Demands	Management Offer
1.			
2.			

The Union is directed to provide a copy of their last CBA, an itemized summary of its CBA demands, as well as a computation of their cost[s] that require resolution in triplicate copies using the same format stated above.

No petition, pleading or any opposition thereto shall be acted upon by this Office, without proof of its service to the adverse party/ parties.

In the interest of speedy labor justice, this Office will entertain no motion for extension or postponement.

The urgency of the need to rule on this case is only in faithful adherence to the following provision of **Article 263 paragraph (i) of the Labor Code**, as follows:

> "***The Secretary of Labor and Employment, the Commission or the voluntary arbitrator shall decide or resolve the dispute within thirty (30) calendar days from the date of the assumption of jurisdiction or the certification or submission of the dispute, as the case may be***. x x x"

The appropriate police authority is hereby deputized to enforce this Order if it turns out that within twenty-four (24) hours from service hereof, there appears a refusal by either or both parties to comply herewith.[10]

The Secretary of Labor and Employment denied the motion for reconsideration of the union in a Resolution dated October

[10] *Id.* at 171-172.

6, 2004. The union's second motion for reconsideration was denied in a Resolution dated December 13, 2004.[11]

Petition for certiorari in the Court of Appeals

The union thereafter filed a petition for *certiorari*,[12] docketed as CA-G.R. SP No. 88178, in the Court of Appeals on January 13, 2005. The union alleged in its petition that the Secretary of Labor and Employment acted with grave abuse of discretion in grossly misappreciating the facts and issue of the case. It contended that the issue is the unfair labor practice of the company in the form of bad faith bargaining and not the CBA deadlock. Anchoring its position on item 8 of what the parties agreed upon as the ground rules that would govern the negotiations, the union argued that, at the time the Order dated September 20, 2004 was issued, there was no CBA deadlock on account of the union's non-conformity with the declaration of a deadlock, as item 8 of the said ground rules provided that a "deadlock can only be declared upon mutual consent of both parties." Thus, the Secretary of Labor and Employment committed grave abuse of discretion when she assumed jurisdiction and directed the parties to submit position papers even on the economic issues.[13]

The Court of Appeals found the position of the union untenable. It cited this Court's ruling in *St. Scholastica's College v. Torres*[14] that the authority of the Secretary of Labor and Employment under Article 263(g) of the Labor Code to assume jurisdiction over a labor dispute causing or likely to cause a strike or lockout in an industry indispensable to national interest includes questions and controversies arising from the said dispute, including cases over which the Labor Arbiter has exclusive jurisdiction. Applying *St. Scholastica's College*, the Court of Appeals found that the 2004 CBA Official Minutes of the Meetings show that the union and the company were already discussing the economic issues

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[11] *Id.* at 59.

[12] *Id*. at 67-96.

[13] *Id*. at 76-79.

[14] G.R. No. 100158, June 29, 1992, 210 SCRA 565.

when the union accused the company of bargaining in bad faith. As such, the Secretary of Labor and Employment had the authority to take cognizance of the economic issues, which issues were the necessary consequence of the alleged bad faith bargaining.[15]

Moreover, according to the Court of Appeals, Article 263(g) of the Labor Code vests in the Secretary of Labor and Employment not only the discretion to determine what industries are indispensable to national interest but also the power to assume jurisdiction over such industries' labor disputes, including all questions and controversies arising from the said disputes. Thus, as the Secretary of Labor and Employment found the company's business to be one that is indispensable to national interest, she had authority to assume jurisdiction over all of the company's labor disputes, including the economic issues.[16]

Finally, the Court of Appeals noted that the union's contention that the Secretary of Labor and Employment cannot resolve the economic issues because the union had not given its consent to the declaration of a deadlock was already moot. The Court of Appeals observed that the union filed on February 7, 2005 another Notice of Strike citing CBA deadlock as a ground and, in an Order dated March 1, 2005, the then Acting Secretary of Labor and Employment, Manuel Imson, granted the company's Manifestation with Motion to Consider the Second Notice of Strike as Subsumed to the First Notice of Strike.[17]

Given the above reasons, the Court of Appeals dismissed the petition for *certiorari* of the union. The dispositive portion of the Decision dated August 8, 2005 reads as follows:

UPON THE VIEW WE TAKE OF THIS CASE, THUS, the petition must be, as it hereby is **DISMISSED**, for lack of merit. Costs against petitioner.[18]

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[15] *Rollo*, pp. 60-62.

[16] *Id.* at 62.

[17] *Id.* at 63.

[18] *Id.* at 63.

A detour: from the National Labor Relations Commission to the Secretary of Labor and Employment

In the meantime, on February 2, 2005, the union filed a complaint for unfair labor practice against the corporation in the National Labor Relations Commission. The union alleged that the company refused, or violated its duty, to bargain.[19]

The company moved for the dismissal of the complaint, believing that all the elements of forum shopping and/or *litis pendentia* were present.[20]

In an Order[21] dated May 9, 2005, the Labor Arbiter found that the case arose from the very same CBA negotiations which culminated into a labor dispute when the union filed a notice of strike for bad faith bargaining and CBA deadlock. According to the Labor Arbiter, the issue raised by the union, refusal to bargain, was a proper incident of the labor dispute over which the Secretary of Labor and Employment assumed jurisdiction. Thus, the case was forwarded for consolidation with the labor dispute case of the parties in the Office of the Secretary of Labor and Employment.

Decision of the Secretary of Labor and Employment

During the pendency of the union's petition for *certiorari* in the Court of Appeals, the Secretary of Labor and Employment rendered a Decision[22] dated June 8, 2005 in OSEC-AJ-0033-04/NCMB-RBIV-LAG-NS-09-048-04/NCMB-RBIV-LAG-NS-02-004-05.

In her Decision, the Secretary of Labor and Employment held that there was already deadlock although the ground for the first Notice of Strike was unfair labor practice for bargaining in bad faith. Citing *Capitol Medical Center Alliance of Concerned*

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[19] *Id.* at 208-209.

[20] CA *rollo*, pp. 354-397, 360; Memorandum of the company in CA-G.R. SP No. 88178.

[21] *Id.* at 392-397.

[22] *Rollo*, pp. 295-302.

Employees-Unified Filipino Service Workers v. Laguesma[23] where it has been held that there may be a deadlock not only in the strict legal sense of an impasse despite reasonable effort at good faith bargaining but also where one of the parties unduly refuses to comply with its duty to bargain, the Secretary of Labor and Employment ruled that the circumstances – 41 CBA meetings showing "reasonable efforts at good faith bargaining" without arriving at a CBA – show that there was effectively a bargaining deadlock between the parties.[24]

Moreover, the Secretary of Labor and Employment also passed upon the issue of whether the company was guilty of bargaining in bad faith:

> Now, is the Company guilty of bargaining in bad faith? This Office rules in the negative.
>
> The duty to bargain does not compel any party to accept a proposal, or make any concession, as recognized by Article 252 of the Labor Code, as amended. The purpose of collective bargaining is the reaching of an agreement resulting in a contract binding on the parties; however, the failure to reach an agreement after negotiations continued for a reasonable period does not establish a lack of good faith. The laws invite and contemplate a collective bargaining contract, but they do not compel one. The duty to bargain does not include the obligation to reach an agreement. Thus, the Company's insistence on a bargaining position to the point of stalemate does not establish bad faith. The Company's offer[,] a lump sum of Php88,000 per year, for each covered employee in lieu of a wage increase cannot, by itself, be taken as an act of bargaining in bad faith. The minutes of the meetings of the parties, show that they both exerted their best efforts, to try to resolve the issues at hand. Many of the proposed improvements or changes, were either resolved, or deferred for further discussion. It is only on the matter of the wage increase, that serious debates were registered. However, the totality of conduct of the Company as far as their bargaining stance with the Union is concerned, does not show that it was bargaining in bad faith.[25]

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[23] 335 Phil. 170 (1997).

[24] *Rollo,* pp. 299-300.

[25] *Id*. at 300.

The Secretary of Labor and Employment then proceeded to decide on the matter of the wage increase and other economic issues of the new CBA. For failure of the union to substantiate its demand for wage increase as it did not file its position paper, the Secretary of Labor and Employment looked at the financial situation of the company, as shown by its audited financial statements, and found it just and equitable to give a lump sum package of ₱95,000.00 per year, per covered employee, for the new CBA covering the period May 1, 2004 until April 30, 2007. The Secretary of Labor and Employment further retained the other benefits covered by the 2001-2004 CBA as she found the said benefits to be sufficient and reasonable.[26]

Neither the union nor the company appealed the Decision dated June 8, 2005 of the Secretary of Labor and Employment.[27] Thus, the said Decision attained finality.

The present petition

The union now comes to this Court to press its contentions. It insists that the corporation is guilty of unfair labor practice through bad faith bargaining. According to the union, bad faith bargaining and a CBA deadlock cannot legally co-exist because an impasse in negotiations can only exist on the premise that both parties are bargaining in good faith. Besides, there could have been no deadlock between the parties as the union had not given its consent to it, pursuant to item 8 of the ground rules governing the parties' negotiations which required mutual consent for a declaration of deadlock. The union also posits that its filing of a CBA deadlock case against the company was a separate and distinct case and not an offshoot of the company's unfair labor practice through bargaining in bad faith. According to the union, as there was no deadlock yet when the union filed the unfair labor practice of bargaining in bad faith, the subsequent deadlock case could neither be an offshoot of, nor an incidental issue in, the unfair labor practice case. Because there was no deadlock yet at the time of the filing of the unfair labor practice

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[26] *Id*. at 300-301.

[27] *Id*. at 262.

case, the union claims that deadlock was not an incidental issue but a non-issue. As deadlock was a non-issue with respect to the unfair labor practice case, the Court of Appeals misapplied *St. Scholastica's College* and the Secretary of Labor and Employment committed grave abuse of discretion when it presumed deadlock in its Order dated September 20, 2004 assuming jurisdiction over the labor dispute between the union and the company.[28]

For its part, the company argues that the Court of Appeals correctly affirmed the Order dated September 20, 2004 of the Secretary of Labor and Employment assuming jurisdiction over the labor dispute between the parties. The company claims that it is engaged in an industry that is vital to the national interest, and that the evidence on record established that there was already a full-blown labor dispute between the company and the union arising from the deadlock in CBA negotiations. The company insists that the alleged bad faith on its part, which the union claimed to have prevented any CBA deadlock, has no basis. The company invokes the final Decision dated June 8, 2005 of the Secretary of Labor and Employment which ruled that the company was not guilty of bargaining in bad faith. For the company, even if the union's first Notice of Strike was based on unfair labor practice and not deadlock in bargaining, the Secretary of Labor and Employment's assumption of jurisdiction over the labor dispute between the parties extended to all questions and controversies arising from the labor dispute, that is, including the economic issues.[29]

The Court's ruling

The petition fails. There are at least four reasons to support the denial of the petition and each reason is sufficient to defeat the union's claims.

First, the petition is barred by *res judicata* in the concept of conclusiveness of judgment.

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[28] *Id.* at 24-42.

[29] *Id.* at 244-262.

The concept of conclusiveness of judgment is explained in *Nabus v. Court of Appeals*[30] as follows:

> The doctrine states that a fact or question which was in issue in a former suit, and was there judicially passed on and determined by a court of competent jurisdiction, is conclusively settled by the judgment therein, as far as concerns the parties to that action and persons in privity with them, and cannot be again litigated in any future action between such parties or their privies, in the same court or any other court of concurrent jurisdiction on either the same or a different cause of action, while the judgment remains unreversed or unvacated by proper authority. The only identities thus required for the operation of the judgment as an estoppel x x x are identity of parties and identity of issues.
>
> It has been held that in order that a judgment in one action can be conclusive as to a particular matter in another action between the same parties or their privies, it is essential that the issues be identical. If a particular point or question is in issue in the second action, and the judgment will depend on the determination of that particular point or question, a former judgment between the same parties [or their privies] will be final and conclusive in the second if that same point or question was in issue and adjudicated in the first suit[.] x x x. (Citations omitted.)

The Decision dated June 8, 2005 of the Secretary of Labor and Employment in the labor dispute over which he assumed jurisdiction, OSEC-AJ-0033-04/NCMB-RBIV-LAG-NS-09-048-04/NCMB-RBIV-LAG-NS-02-004-05, has long attained finality. The union never denied this.

In this connection, Article 263(i) of the Labor Code is clear:

> ART. 263. *Strikes, picketing, and lockouts.* – x x x
>
> x x x x x x x x x
>
> (i) The Secretary of Labor and Employment, the Commission or the voluntary arbitrator shall decide or resolve the dispute within thirty (30) calendar days from the date of the assumption of jurisdiction or the certification or submission of the dispute, as the case may be.

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[30] 271 Phil. 768, 784 (1991).

The decision of the President, **the Secretary of Labor and Employment**, the Commission or the voluntary arbitrator **shall be final and executory ten (10) calendar days after receipt thereof by the parties**. (Emphases supplied.)

Pursuant to Article 263(i) of the Labor Code, therefore, the Decision dated June 8, 2005 of the Secretary of Labor and Employment became final and executory after the lapse of the period provided under the said provision. Moreover, neither party further questioned the Decision dated June 8, 2005 of the Secretary of Labor and Employment.

The Decision dated June 8, 2005 of the Secretary of Labor and Employment already considered and ruled upon the issues being raised by the union in this petition. In particular, the said Decision already passed upon the issue of whether there was already an existing deadlock between the union and the company when the Secretary of Labor and Employment assumed jurisdiction over their labor dispute. The said Decision also answered the issue of whether the company was guilty of bargaining in bad faith. As the Decision dated June 8, 2005 of the Secretary of Labor and Employment already settled the said issues with finality, the union cannot once again raise those issues in this Court through this petition without violating the principle of *res judicata*, particularly in the concept of conclusiveness of judgment.

Second, a significant consequence of the finality of the Decision dated June 8, 2005 of the Secretary of Labor and Employment is that it rendered the controversy between the union and the company moot.

In particular, with the finality of the Decision dated June 8, 2005, the labor dispute, covering both the alleged bargaining in bad faith and the deadlock, between the union and the company was settled with finality. As the said Decision settled essentially the same questions being raised by the union in this case, the finality of the said Decision rendered this case moot. The union cannot be allowed to use this case to once again unsettle the issues that have been already settled with finality by the final and executory Decision dated June 8, 2005 of the Secretary of Labor and Employment.

Moreover, the issues of alleged bargaining in bad faith on the part of the company and the deadlock in the negotiations were both incident to the framing of a new CBA that would govern the parties for the period 2004 to 2007. Not only had the said period long lapsed, the final Decision dated June 8, 2005 of the Secretary of Labor and Employment also facilitated the framing of the new CBA, particularly on the disputed provision on annual lump sum payment in lieu of wage increase. The dispositive portion of the said Decision is clear and categorical:

> **WHEREFORE**, this Office hereby orders:
>
> 1. The award of Php95,000 lump sum, per covered employee per year, for the duration of their CBA, effective 01 May 2004 to 30 April 2007;
>
> 2. The retention of benefits on vacation leave, sick leave, and special leave as provided in the 2001-2004 CBA;
>
> 3. All improvements that [the] parties may have agreed upon during the negotiations, are adopted as part of the CBA. All other demands, not passed upon herein, are deemed **DENIED**.
>
> The parties are hereby directed, to submit a copy of the CBA incorporating the awards granted herein, within ten (10) days from receipt of this Decision.[31]

As the above directive of the Secretary of Labor and Employment in the decretal portion of the Decision dated June 8, 2005 has long been final and executory, the dispute on the matter of the provision on annual wage increase contra yearly lump sum payment is already moot.

Third, the petition is improper as it presents questions of fact. A question of fact cannot properly be raised in a petition for review under Rule 45 of the Rules of Court.[32] This petition

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[31] *Rollo*, pp. 301-302.

[32] Only questions of law should be raised in a petition for review under Rule 45 (*Mindanao Terminal and Brokerage Service, Inc. v. Nagkahiusang Mamumuo sa Minterbro-Southern Philippines Federation of Labor*, G.R. No. 174300, December 5, 2012, 687 SCRA 28, 41).

of the union now before this Court is a petition for review under Rule 45 of the Rules of Court.

The existence of bad faith is a question of fact and is evidentiary.[33] The crucial question of whether or not a party has met his statutory duty to bargain in good faith typically turns on the facts of the individual case, and good faith or bad faith is an inference to be drawn from the facts.[34] Thus, the issue of whether or not there was bad faith on the part of the company when it was bargaining with the union is a question of fact. It requires that the reviewing court look into the evidence to find if indeed there is proof that is substantial enough to show such bad faith.

The issue of whether there was already deadlock between the union and the company is likewise a question of fact. It requires the determination of evidence to find whether there is a "counteraction" of forces between the union and the company and whether each of the parties exerted "reasonable effort at good faith bargaining."[35] This is so because a deadlock is defined as follows:

> A 'deadlock' is x x x the counteraction of things producing entire stoppage; x x x There is a deadlock when there is a complete blocking or stoppage resulting from the action of equal and opposed forces x x x. The word is synonymous with the word impasse, which x x x 'presupposes reasonable effort at good faith bargaining which, despite noble intentions, does not conclude in agreement between the parties.'[36]

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[33] *Belle Corporation v. De Leon-Banks*, G.R. No. 174669, September 19, 2012, 681 SCRA 351, 362.

[34] *Hongkong and Shanghai Banking Corporation Employees Union v. National Labor Relations Commission*, 346 Phil. 524, 534 (1997).

[35] See *Capitol Medical Center Alliance of Concerned Employees-Unified Filipino Service Workers v. Laguesma*, *supra* note 23 at 179.

[36] *Id*. at 178-179, citing *Divine Word University of Tacloban v. Secretary of Labor and Employment*, G.R. No. 91915, September 11, 1992, 213 SCRA 759, 773.

Considering that the issues presented by the union are factual issues, the union's petition is improper. As a rule, this Court cannot properly inquire into factual matters in the exercise of its judicial power under Rule 45 of the Rules of Court. While there are exceptions to this rule, none of the exceptions apply in this case.

Fourth, and finally, assuming that this Court may disregard the conclusiveness of judgment and review the factual matters raised by the union, the merits are still not in the union's favor.

The findings of fact of the Secretary of Labor and Employment in the Decision dated June 8, 2005 that there already existed a bargaining deadlock when she assumed jurisdiction over the labor dispute between the union and the company, and that there was no bad faith on the part of the company when it was bargaining with the union are both supported by substantial evidence. This Court sees no reason to reverse or overturn the said findings.

The final and executory Decision dated June 8, 2005 of the Secretary of Labor and Employment squarely addressed the contention of the union that the company was guilty of bargaining in bad faith. The said Decision correctly characterized the nature of the duty to bargain, that is, it does not compel any party to accept a proposal or to make any concession.[37] While the purpose of collective bargaining is the reaching of an agreement between the employer and the employee's union resulting in a binding contract between the parties, the failure to reach an agreement

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[37] In this connection, Article 252 of the Labor Code defines the duty to bargain collectively as follows:

ART. 252. *Meaning of duty to bargain collectively.* – The duty to bargain collectively means the performance of a mutual obligation to meet and convene promptly and expeditiously in good faith for the purpose of negotiating an agreement with respect to wages, hours of work and all other terms and conditions of employment including proposals for adjusting any grievances or questions arising under such agreements and executing a contract incorporating such agreements if requested by either party but **such duty does not compel any party to agree to a proposal or to make any concession**. (Emphasis supplied.)

after negotiations continued for a reasonable period does not mean lack of good faith. The laws invite and contemplate a collective bargaining contract but do not compel one.[38] For after all, a CBA, like any contract is a product of mutual consent and not of compulsion. As such, the duty to bargain does not include the obligation to reach an agreement.[39] In this light, the corporation's unswerving position on the matter of annual lump sum payment in lieu of wage increase did not, by itself, constitute bad faith even if such position caused a stalemate in the negotiations, as correctly ruled by the Secretary of Labor and Employment in the decision dated June 8, 2005.

As there was no bad faith on the part of the company in its bargaining with the union, deadlock was possible and did occur. The union's reliance on item 8 of the ground rules governing the parties' negotiations which required mutual consent for a declaration of deadlock was reduced to irrelevance by the actual facts. *Contra factum non valet argumentum.* There is no argument against facts. And the fact is that the negotiations between the union and the company were stalled by the opposing offers of yearly wage increase by the union, on the one hand, and annual lump sum payment by the company, on the other hand. Each party found the other's offer unacceptable and neither party was willing to yield. The company suggested seeking the assistance of a third party to settle the issue but the union preferred the remedy of filing a notice of strike. Each party was adamant in its position. Thus, because of the unresolved issue on wage increase, there was actually a complete stoppage of the ongoing negotiations between the parties and the union filed a Notice of Strike. A mutual declaration would neither add to nor subtract from the reality of the deadlock then existing between the parties. Thus, the absence of the parties' mutual declaration of deadlock does not mean that there was no deadlock. At most, it would have been simply a recognition of the prevailing status quo between the parties.

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[38] *Union of Filipro Employees-Drug, Food and Allied Industries Unions-Kilusang Mayo Uno v. Nestle Philippines, Inc.*, 571 Phil. 29, 41 (2008).

[39] *Id*.

More importantly, the union only caused confusion in the proceedings before the Secretary of Labor and Employment when it questioned the latter's assumption of jurisdiction over the labor dispute between the union and the company on the ground that the "Secretary erred in assuming jurisdiction over the 'CBA' case when it [was] not the subject matter of the notice of strike" because the case was "all about 'ULP' in the form of bad faith bargaining." For the union, the Secretary of Labor and Employment should not have touched the issue of the CBA as there was no CBA deadlock at that time, and should have limited the assumption of jurisdiction to the charge of unfair labor practice for bargaining in bad faith.[40]

The union is wrong.

As discussed above, there was already an actual existing deadlock between the parties. What was lacking was the formal recognition of the existence of such a deadlock because the union refused a declaration of deadlock. Thus, the union's view that, at the time the Secretary of Labor and Employment exercised her power of assumption of jurisdiction, the issue of deadlock was neither an incidental issue to the matter of unfair labor practice nor an existing issue is incorrect.

More importantly, however, the union's mistaken theory that the deadlock issue was neither incidental nor existing is based on its premise that the case is all about the company's alleged unfair labor practice of bargaining in bad faith, which is the ground stated in its first Notice of Strike. In particular, the union asserts:

> The evidentiary value of the Notice of Strike for ULP of BAD FAITH BARGAINING (Annex "**M**" of the petition) cannot be taken for granted. It is the very important documentary evidence that shows what is the existing "**labor dispute**" between the parties.[41]

While the first Notice of Strike is indeed significant in the determination of the existing labor dispute between the parties,

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[40] *Rollo*, p. 178.

[41] *Id*. at 118.

it is not the sole criterion. As this Court explained in *Union of Filipro Employees-Drug, Food and Allied Industries Unions-Kilusang Mayo Uno v. Nestle Philippines, Inc.*:[42]

> The Secretary of the DOLE has been explicitly granted by Article 263(g) of the Labor Code the authority to assume jurisdiction over a labor dispute causing or likely to cause a strike or lockout in an industry indispensable to the national interest, and decide the same accordingly. And, **as a matter of necessity, it includes questions incidental to the labor dispute; that is, issues that are necessarily involved in the dispute itself, and not just to that ascribed in the Notice of Strike or otherwise submitted to him for resolution.** x x x (Emphasis supplied.)

The totality of the company's Petition for Assumption of Jurisdiction, including every allegation therein, also guided the Secretary of Labor and Employment in the proper determination of the labor dispute over which he or she was being asked to assume jurisdiction.

A "labor dispute" is defined under Article 212(l) of the Labor Code as follows:

> ART. 212. *Definitions*. – x x x
>
> x x x x x x x x x
>
> (l) "Labor dispute" includes any controversy or matter concerning terms or conditions of employment or the association or representation of persons in negotiating, fixing, maintaining, changing or arranging the terms and conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee.

In this case, there was a dispute, an unresolved issue on several matters, between the union and the company in the course of the negotiations for a new CBA. Among the unsettled issues was the matter of compensation. In particular, paragraphs 1 to 6 of the statement of Antecedent Facts in the company's Petition for Assumption of Jurisdiction[43] read:

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[42] *Supra* note 38 at 49.

[43] CA *rollo*, pp. 32-40.

1. The Collective Bargaining Agreement (CBA) of the Company and the Union expired on 30 April 2004.

2. Thus, as early as 13 April 2004, the Company and the Union already met to discuss the ground rules that would govern their upcoming negotiations. Then, on 15 April 2004, the Union submitted its proposals for the renewal of their CBA.

3. While a total of 41 meetings were held between the parties, several items, including the matter of compensation, remained unresolved.

Copies of the Minutes of the 41 meetings are attached hereto and made integral part hereof as Annexes "A" to "A-40".

4. On 2 September 2004, the Union filed a Notice of Strike with the NCMB, Region IV based in Calamba, Laguna anchored on a perceived unfair labor practice consisting of alleged bad faith bargaining on the part of the Company.

Although there is no basis to the charge of unfair labor practice as to give a semblance of validity to the notice of strike, the Company willingly and actually participated in the conciliation and mediation conferences called by the NCMB to settle the dispute.

A copy of the Notice of Strike is attached hereto and made integral part hereof as Annex "B".

5. Although conciliation meetings have been conducted by the National Conciliation and Mediation Board (NCMB) through Conciliator Leodegario Teodoro on 09 and 13 September 2004, no settlement of the dispute has yet been agreed upon.

6. Based on the attendant circumstances, as well as on the actuations of the Union officers and members, it is likely that the Union has already conducted, or is set to conduct soon, a strike vote.[44]

Thus, the labor dispute between the union and the company concerned the unresolved matters between the parties in relation to their negotiations for a new CBA. The power of the Secretary of Labor and Employment to assume jurisdiction over this dispute includes and extends to all questions and controversies arising from the said dispute, such as, but not limited to the union's

[44] *Id*. at 33-34.

allegation of bad faith bargaining. It also includes and extends to the various unresolved provisions of the new CBA such as compensation, particularly the matter of annual wage increase or yearly lump sum payment in lieu of such wage increase, whether or not there was deadlock in the negotiations. Indeed, nowhere does the Order dated September 20, 2004 of the Secretary of Labor and Employment mention a CBA deadlock. What the union viewed as constituting the inclusion of a CBA deadlock in the assumption of jurisdiction was the inclusion of the economic issues, particularly the company's stance of yearly lump sum payment in lieu of annual wage increase, in the directive for the parties to submit their respective position papers.[45] The union's Motion for Reconsideration (With Urgent Prayer to Compel the Company to Justify Offer of Wage [Increase] Moratorium) and Second Motion for Reconsideration questioning the Order dated September 20, 2004 of the Secretary of Labor and Employment actually confirm that the labor dispute between the parties essentially and necessarily includes the conflicting positions of the union, which advocates annual wage increase, and of the company, which offers yearly lump sum payment in lieu of wage increase. In fact, that is the reason behind the union's prayer that the company be ordered to justify its offer of wage increase moratorium.[46] As there is already an existing controversy on the matter of wage increase, the Secretary of Labor and Employment need not wait for a deadlock in the negotiations to take cognizance of the matter. That is the significance of the power of the Secretary of Labor and Employment under Article 263(g) of the Labor Code to assume jurisdiction over a labor dispute causing or likely to cause a strike or lockout in an industry indispensable to the national interest. As this Court elucidated in *Bagong Pagkakaisa ng Manggagawa ng Triumph International v. Secretary of the Department of Labor and Employment*:[47]

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[45] *See* union's Motion for Reconsideration (With Urgent Prayer to Compel the Company to Justify Offer of Wage Moratorium) and Second Motion for Reconsideration, *rollo*, pp. 173-180 and 188-195, respectively.

[46] *Id.* at 180 and 195.

[47] G.R. No. 167401, July 5, 2010, 623 SCRA 185, 205-206.

Article 263(g) is both an extraordinary and a preemptive power to address an extraordinary situation – a strike or lockout in an industry indispensable to the national interest. This grant is not limited to the grounds cited in the notice of strike or lockout that may have preceded the strike or lockout; nor is it limited to the incidents of the strike or lockout that in the meanwhile may have taken place. As the term "assume jurisdiction" connotes, the intent of the law is to give the Labor Secretary full authority to resolve all matters within the dispute that gave rise to or which arose out of the strike or lockout; it includes and extends to all questions and controversies arising from or related to the dispute, including cases over which the labor arbiter has exclusive jurisdiction. (Citation omitted.)

Everything considered, therefore, the Secretary of Labor and Employment committed no abuse of discretion when she assumed jurisdiction over the labor dispute of the union and the company.

WHEREFORE, the petition is hereby **DENIED**.

SO ORDERED.

Sereno, C.J. (Chairperson), Bersamin, Villarama, Jr., and *Reyes, JJ.,* concur.

SECOND DIVISION

[G.R. No. 173802. April 7, 2014]

NATIONAL HOUSING AUTHORITY, *petitioner, vs.* **COURT OF APPEALS, BERNABE NOBLE, WILLIAM GAN, JULIO RODRIGUEZ, JR., SAMUEL LIM, SANDRA YAP NG, ALFONSO UY, and BOARD OF COMMISSIONERS,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; DOCTRINE OF IMMUTABILITY OF JUDGMENT.—** It is well-settled that a decision that has acquired finality becomes immutable and unalterable, and may no longer be modified in any respect, even if the modification is meant to correct erroneous conclusions of fact and law, and whether it be made by the court that rendered it or by the Highest Court of the land. This principle, commonly known as the doctrine of immutability of judgment, has a two-fold purpose, namely: (*a*) to avoid delay in the administration of justice and thus, procedurally, to make orderly the discharge of judicial business; and (*b*) to put an end to judicial controversies, at the risk of occasional errors, which is precisely why courts exist. Verily, it fosters the judicious perception that the rights and obligations of every litigant must not hang in suspense for an indefinite period of time. As such, it is not regarded as a mere technicality to be easily brushed aside, but rather, a matter of public policy which must be faithfully complied.

2. **ID.; ID.; JUDGMENT; AS THE MOTION FOR RECONSIDERATION WAS FILED WAY BEYOND THE 15-DAY REGLEMENTARY PERIOD, COURT *A QUO'S* JUDGMENT HAD LAPSED INTO FINALITY.—** As the motion [for reconsideration] was filed way beyond the 15-day reglementary period prescribed therefor, the court *a quo's* judgment had already lapsed into finality. Consequently, the Assailed Order cannot be made subject to further appellate review and now constitutes *res judicata* as to every matter offered and received in the proceedings below as well as to any other matter admissible therein and which might have been offered for that purpose.

APPEARANCES OF COUNSEL

Office of the Government Corporate Counsel for petitioner.
Jerry M. Pacuribot for William Gan, *et al.*
Orlando E. Ong for Zamboanga Cement Traders, Inc.

R E S O L U T I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] is the Resolution[2] dated June 30, 2006 of the Court of Appeals (CA) in CA-G.R. CV No. 73725 which dismissed petitioner National Housing Authority's (NHA) appeal and held that the Order[3] dated August 3, 1998 of the Regional Trial Court (RTC) of Cagayan de Oro City, Misamis Oriental (Misamis), Branch 17 (court *a quo*) in Civil Case No. 7847 (Assailed Order) had become final and executory.[4]

The Facts

On May 25, 1981, the NHA filed a case against respondents Bernabe Noble, *et al.* (respondents-landowners) for the expropriation of their properties situated in Lapasan, Cagayan de Oro City (subject properties), pursuant to Letter of Instructions No. (LOI) 555, mandating a nationwide Slum Improvement and Resettlement Program, and LOI 557, otherwise known as "Adopting Slum Improvement." The case was docketed as Civil Case No. 7847 and originally raffled to Branch V of the then Court of First Instance of Misamis Oriental, but was transferred to Branch 20 of the Misamis RTC (Branch 20), upon the effectivity of Batas Pambansa Bilang 129.[5] Consequently, Branch 20 issued a writ of possession placing the respondent-landowners' properties under the NHA's control.[6]

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[1] *Rollo*, pp. 9-18.

[2] *Id.* at 45-54. Penned by Associate Justice Rodrigo F. Lim, Jr., with Associate Justices Teresita Dy-Liacco Flores and Sixto C. Marella, Jr., concurring.

[3] Not attached in the *rollo*.

[4] *Rollo*, p. 54.

[5] Entitled "AN ACT REORGANIZING THE JUDICIARY, APPROPRIATING FUNDS THEREFOR, AND FOR OTHER PURPOSES."

[6] *Rollo*, p. 46.

Thereafter, the case was transferred to Branch 23 of the Misamis RTC (Branch 23), which appointed commissioners who appraised the fair market value (FMV) of the subject properties at ₱470.00 per square meter, as of 1984. Later on, the case was once more transferred to the court *a quo*, which then issued an Order dated April 5, 1990, approving the aforementioned amount as just compensation, and ordering the NHA to pay respondents-landowners the same.[7]

Dissatisfied, the NHA appealed the commissioners' valuation of the subject properties before the CA, docketed as CA-G.R. CV No. 33832. On August 11, 1992, the CA rendered a decision remanding the case to the court *a quo* for further proceedings on the issue of just compensation. On May 12, 1993, the CA issued an Entry of Judgment which closed and terminated the said appeal proceeding.[8]

Accordingly, the records were remanded to the court *a quo* for further proceedings, during which a new set of commissioners was appointed to re-appraise the FMV of the subject properties. Eventually, the commissioners pegged the just compensation at ₱705.00 per square meter, taking into consideration the value of the subject properties in 1984 and the accumulated improvements thereon since then.[9]

The Court *A Quo* Ruling

On August 3, 1998, the court *a quo* issued the Assailed Order, approving the commissioners' valuation of the subject properties at ₱705.00 per square meter and, thus, ordering the NHA to pay respondents-landowners the amounts due to them.[10]

Claiming that it only received a copy of the Assailed Order on March 3, 1999, the NHA filed a Manifestation and Motion for Reconsideration (motion) on March 11, 1999, arguing that

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[7] *Id.* at 46-47.

[8] *Id.* at 47.

[9] *Id.*

[10] *Id.* at 47-48.

the FMV of the subject properties should have been determined at the time the expropriation proceeding was instituted. For its part, respondents-landowners opposed the NHA's motion on the ground that it was belatedly filed and thus, the said order already became final and executory. In particular, respondents-landowners contended that contrary to the NHA's claim, the registry return receipt on record shows that it received a copy of the questioned Order on November 10, 1998.[11]

Finding respondents-landowners' opposition to be well-taken, the court *a quo* denied the NHA's motion on May 21, 1990. Aggrieved, the NHA appealed to the CA.[12]

The CA Ruling

In a Resolution[13] dated September 9, 2002, the CA initially dismissed the NHA's appeal on the ground that it failed to file its appellant's brief on time. The NHA moved for reconsideration, which was granted in a Resolution[14] dated September 10, 2003. As such, the CA ordered respondents-landowners to file their comment to said appeal. However, instead of filing their comment as directed, respondents-landowners moved for the resolution's reconsideration, contending that the appeal should be dismissed since the Assailed Order had long become final and executory due to the NHA's failure to timely file a motion for reconsideration therefrom or perfect its appeal within the prescribed reglementary period.[15]

In a Resolution[16] dated June 30, 2006, the CA dismissed the appeal and held that the Assailed Order had already become final and executory. Accordingly, it ordered that the entire records of the case be remanded to the court *a quo* for execution

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[11] *Id*. at 48.

[12] *Id*. at 48-50.

[13] Not attached in the *rollo*.

[14] Not attached in the *rollo*.

[15] *Rollo*, pp. 50-51.

[16] *Id*. at 45-54.

proceedings. The CA held that contrary to NHA's claim that it only received a copy of the Assailed Order on March 3, 1999 and, thus, timely filed its motion for reconsideration on March 11, 1999, the registry return receipt on record clearly shows that it already received a copy of the same on November 10, 1998. It opined that the issuance of the registry return receipt enjoys the presumption of regularity, and, hence, the entries on said receipt should be given full evidentiary weight, including, among others, the date indicated thereon. As a result, the Assailed Order had long become final and executory and the outright dismissal of NHA's appeal was deemed to be proper.[17]

At odds with the CA's ruling, the NHA filed the instant petition.

The Issue Before the Court

The primordial issue raised for the Court's resolution is whether or not the CA erred in finding that the Assailed Order had already become final and executory.

The Court's Ruling

The petition is without merit.

It is well-settled that a decision that has acquired finality becomes immutable and unalterable, and may no longer be modified in any respect, even if the modification is meant to correct erroneous conclusions of fact and law, and whether it be made by the court that rendered it or by the Highest Court of the land. This principle, commonly known as the doctrine of immutability of judgment, has a two-fold purpose, namely: (*a*) to avoid delay in the administration of justice and thus, procedurally, to make orderly the discharge of judicial business; and (*b*) to put an end to judicial controversies, at the risk of occasional errors, which is precisely why courts exist. Verily, it fosters the judicious perception that the rights and obligations of every litigant must not hang in suspense for an indefinite period of time. As such, it is not regarded as a mere technicality to be

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[17] *Id*. at 51-52.

easily brushed aside, but rather, a matter of public policy which must be faithfully complied.[18]

In this case, the Court concurs with the CA's view that the Assailed Order had already become final and executory at the time when the NHA sought to have it reconsidered before the court *a quo*. As evidenced by the registry return receipt on record, the NHA received a copy of the Assailed Order on **November 10, 1998**. However, **it moved for reconsideration therefrom only on March 11, 1999, or more than four (4) months from notice**. As the motion was filed way beyond the 15-day reglementary period prescribed therefor, the court *a quo*'s judgment had already lapsed into finality. Consequently, the Assailed Order cannot be made subject to further appellate review and now constitutes *res judicata* as to every matter offered and received in the proceedings below as well as to any other matter admissible therein and which might have been offered for that purpose.[19]

In an effort to remove itself from this quandary, the NHA points out that as per the registry return receipt on record, it received a copy of the Assailed Order on November 10, 1998 through a certain Atty. Epifanio P. Recaña (Atty. Recaña). The NHA claims that as early as January 1997, Atty. Recaña ceased to be connected with it and thus, it contends that he could not have validly received a copy of the Assailed Order in its behalf.[20]

The contention is untenable.

Other than its bare assertions and a self-serving certification[21] emanating from its own human resource management department, the NHA has not shown any sufficient proof that the service of a copy of the Assailed Order to it on November 10, 1998 is

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[18] See *Sangguniang Barangay of Pangasugan, Baybay, Leyte v. Exploration Permit Application (EXPA-000005-VIII) of Philippine National Oil Company*, G.R. No. 162226, September 2, 2013; citations omitted.

[19] See *Melotindos v. Tobias*, 439 Phil. 910, 916 (2002); citations omitted.

[20] *Rollo*, pp. 39-40 and 145-146.

[21] *Id*. at 150.

invalid. Moreover, the NHA could have easily presented Atty. Recaña, or at least a statement of his, to disown any authority to receive a copy of the Assailed Order in the former's behalf but it failed to do so. Succinctly put, the NHA's unsubstantiated asservations cannot prevail over the contrary statement of a postal official as embodied in the registry return receipt, considering that it is the latter's primary duty to send mail matters and thus, accorded with the presumption of regularity.[22]

WHEREFORE, the petition is **DENIED**. The Resolution dated June 30, 2006 of the Court of Appeals in CA-G.R. CV No. 73725 is hereby **AFFIRMED**.

SO ORDERED.

Carpio (Chairperson), Brion, del Castillo, and *Perez, JJ.*, concur.

THIRD DIVISION

[G.R. No. 175540. April 07, 2014]

DR. FILOTEO A. ALANO, *petitioner, vs.* **ZENAIDA MAGUD-LOGMAO,** *respondent.*

SYLLABUS

1. CIVIL LAW; QUASI-DELICT; NEGLIGENCE IN GRANTING AUTHORIZATION FOR THE REMOVAL OF THE INTERNAL ORGANS OF RESPONDENT'S SON WHO HAD BEEN DECLARED BRAIN DEAD, THUS CAUSING SUFFERINGS TO RESPONDENT; NEGATED AS AUTHORIZATION WAS MADE ACCORDING TO

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[22] See *Melotindos v. Tobias*, *supra* note 19, at 916-917; citations omitted.

LAW AND REASONABLE EFFORTS WERE EXERTED TO LOCATE THE RELATIVES.— Petitioner maintains that when he gave authorization for the removal of some of the internal organs to be transplanted to other patients, he did so in accordance with the letter of the law, Republic Act (*R.A.*) No. 349, as amended by Presidential Decree (*P.D.*) 856, *i.e.*, giving his subordinates instructions to exert all reasonable efforts to locate the relatives or next of kin of respondent's son. In fact, announcements were made through radio and television, the assistance of police authorities was sought, and the NBI Medico-Legal Section was notified. x x x A careful reading of the [Memorandum issued by petitioner] shows that petitioner instructed his subordinates to "make certain" that "all reasonable efforts" are exerted to locate the patient's next of kin, even enumerating ways in which to ensure that notices of the death of the patient would reach said relatives. It also clearly stated that permission or authorization to retrieve and remove the internal organs of the deceased was being given ONLY IF the provisions of the applicable law had been complied with. Such instructions reveal that petitioner acted prudently by directing his subordinates to exhaust all reasonable means of locating the relatives of the deceased. He could not have made his directives any clearer. He even specifically mentioned that **permission is only being granted IF** the Department of Surgery has complied with all the requirements of the law. Verily, petitioner could not have been faulted for having full confidence in the ability of the doctors in the Department of Surgery to comprehend the instructions, obeying all his directives, and acting only in accordance with the requirements of the law. Furthermore, as found by the lower courts from the records of the case, the doctors and personnel of NKI disseminated notices of the death of respondent's son to the media and sought the assistance of the appropriate police authorities even before petitioner issued the Memorandum. Prior to performing the procedure for retrieval of the deceased's internal organs, the doctors concerned also sought the opinion and approval of the Medico-Legal Officer of the NBI. Thus, there can be no cavil that petitioner employed reasonable means to disseminate notifications intended to reach the relatives of the deceased.

2. ID.; ID.; ID.; ID.; HARVESTING OF INTERNAL ORGANS FOR TRANSPLANTATION AFTER *ONLY* 24 HOURS

FROM THE TIME NOTICES WERE DISSEMINATED, NOT ESTABLISHED AS UNREASONABLE TIME.— As stated in *Otero v. Tan*, "[i]n civil cases, it is a basic rule that the party making allegations has the burden of proving them by a preponderance of evidence. The parties must rely on the strength of their own evidence and not upon the weakness of the defense offered by their opponent." Here, there is no proof that, indeed, the period of around 24 hours from the time notices were disseminated, cannot be considered as reasonable under the circumstances. They failed to present any expert witness to prove that given the medical technology and knowledge at that time in the 1980's, the doctors could or should have waited longer before harvesting the internal organs for transplantation.

LEONEN, *J., concurring opinion*:

1. **CIVIL LAW; QUASI-DELICT; ELEMENTS.—** This article defines a quasi-delict as: **Article 2176**. Whoever by act or omission causes damage to another, there being fault or negligence, is obliged to pay for the damage done. Such fault or negligence, if there is no pre-existing contractual relation between the parties, is called a quasi-delict and is governed by the provisions of this Chapter. The elements of a quasi-delict are: (1) an act or omission; (2) the presence of fault or negligence in the performance or non-performance of the act; (3) injury; (4) a causal connection between the negligent act and the injury; and (5) no pre-existing contractual relation. Jurisprudence, however, specifies four (4) essential elements: "(1) duty; (2) breach; (3) injury; and (4) proximate causation."

2. **ID.; ID.; DISTINGUISHED FROM ACTIONABLE WRONGS UNDER ARTICLES 19, 20 AND 21 OF THE CIVIL CODE.—** Article 2176 is not an all-encompassing enumeration of all actionable wrongs which can give rise to the liability for damages. x x x Article 19 is the general rule which governs the conduct of human relations. By itself, it is not the basis of an actionable tort. Article 19 describes the degree of care required so that an actionable tort may arise when it is alleged together with Article 20 or Article 21. Article 20 concerns violations of existing law as basis for an injury. It allows recovery should the act have been willful or negligent. Willful may refer to the intention to do the act and the desire to achieve the outcome

which is considered by the plaintiff in tort action as injurious. Negligence may refer to a situation where the act was consciously done but without intending the result which the plaintiff considers as injurious. Article 21, on the other hand, concerns injuries that may be caused by acts which are not necessarily proscribed by law. This article requires that the act be willful, that is, that there was an intention to do the act and a desire to achieve the outcome. In cases under Article 21, the legal issues revolve around whether such outcome should be considered a legal injury on the part of the plaintiff or whether the commission of the act was done in violation of the standards of care required in Article 19. Article 2176 covers situations where an injury happens through an act or omission of the defendant. When it involves a positive act, the intention to commit the outcome is irrelevant. The act itself must not be a breach of an existing law or a pre-existing contractual obligation. What will be considered is whether there is "fault or negligence" attending the commission of the act which necessarily leads to the outcome considered as injurious by the plaintiff. The required degree of diligence will then be assessed in relation to the circumstances of each and every case. Article 2176 should not have been the basis for the cause of action in this case. Rather, it should have been Article 20, which is applicable when there is a violation of law.

3. ID.; HUMAN RELATIONS; TORTS; DOCTRINE OF INFORMED CONSENT; LIABILITY FOR DAMAGES IN CASE OF FAILURE TO OBTAIN CONSENT OF THE PATIENT OR "SUBSTITUTED" CONSENT FOR PURPOSES OF ORGAN DONATION.— The doctrine of informed consent was introduced in this jurisdiction only very recently in *Dr. Li v. Spouses Soliman*. This court ruled that liability may arise in cases where the physician fails to obtain the consent of the patient before performing any medical procedure. x x x Those who consent to using their organs upon their death for the benefit of another can make their consent known prior to their death by following the requirements of the law. Should a patient die prior to making his or her informed consent known, the law provides a list of persons who may consent on his or her behalf, that is, "substituted" informed consent. Since the incident in this case occurred in 1988, Republic Act No. 349, as amended by Republic Act No. 1056, is the law that applies. Section 2 [third paragraph] of the law

states that: x x x After the death of the person, authority to use human organs or any portion or portions of the human body for medical, surgical or scientific purposes may also be granted by his nearest relative or guardian at the time of his death or in the absence thereof, by the person or head of the hospital, or institution having custody of the body of the deceased: **Provided, however, That the said person or head of the hospital or institution has exerted *reasonable efforts* to locate the aforesaid guardian or relative.** A copy of every such authorization must be furnished the Secretary of Health. x x x Considering that Republic Act No. 349, as amended, does not provide a remedy in case of violation, an application of the doctrine of informed consent vis-à-vis Article 20 of the Civil Code may give rise to an action for damages. In this case, Dr. Alano must first be shown to have acted *willfully* and *negligently* to the damage and prejudice of Zenaida. x x x As correctly found by the majority, Zenaida failed to prove that Dr. Alano did not exercise the reasonable care and caution of an ordinarily prudent person.

APPEARANCES OF COUNSEL

Pelaez Gregorio Gregorio & Lim for petitioner.
Manuel Mendoza for respondent.

D E C I S I O N

PERALTA, *J.*:

This deals with the Petition for Review on *Certiorari* under Rule 45 of the Rules of Court praying that the Decision[1] of the Court of Appeals (CA), dated March 31, 2006, adjudging petitioner liable for damages, and the Resolution[2] dated November 22, 2006, denying petitioner's motion for reconsideration thereof, be reversed and set aside.

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[1] Penned by Associate Justice Marina L. Buzon, with Associate Justices Aurora Santiago-Lagman and Arcangelita Romilla-Lontok, concurring; *rollo*, pp. 71-96 .

[2] *Id.* at 98-101.

The CA's narration of facts is accurate, to wit:

Plaintiff-appellee Zenaida Magud-Logmao is the mother of deceased Arnelito Logmao. Defendant-appellant Dr. Filoteo Alano is the Executive Director of the National Kidney Institute (NKI).

At around 9:50 in the evening of March 1, 1988, Arnelito Logmao, then eighteen (18) years old, was brought to the East Avenue Medical Center (EAMC) in Quezon City by two sidewalk vendors, who allegedly saw the former fall from the overpass near the Farmers' Market in Cubao, Quezon City. The patient's data sheet identified the patient as Angelito Lugmoso of Boni Avenue, Mandaluyong. However, the clinical abstract prepared by Dr. Paterno F. Cabrera, the surgical resident on-duty at the Emergency Room of EAMC, stated that the patient is Angelito [Logmao]. Dr. Cabrera reported that [Logmao] was drowsy with alcoholic breath, was conscious and coherent; that the skull x-ray showed no fracture; that at around 4:00 o'clock in the morning of March 2, 1988, [Logmao] developed generalized seizures and was managed by the neuro-surgery resident on-duty; that the condition of [Logmao] progressively deteriorated and he was intubated and ambu-bagging support was provided; that admission to the Intensive Care Unit (ICU) and mechanical ventilator support became necessary, but there was no vacancy at the ICU and all the ventilator units were being used by other patients; that a resident physician of NKI, who was rotating at EAMC, suggested that [Logmao] be transferred to NKI; and that after arrangements were made, [Logmao] was transferred to NKI at 10:10 in the morning.

At the NKI, the name Angelito [Logmao] was recorded as Angelito Lugmoso. Lugmoso was immediately attended to and given the necessary medical treatment. As Lugmoso had no relatives around, Jennifer B. Misa, Transplant Coordinator, was asked to locate his family by enlisting police and media assistance. Dr. Enrique T. Ona, Chairman of the Department of Surgery, observed that the severity of the brain injury of Lugmoso manifested symptoms of brain death. He requested the Laboratory Section to conduct a tissue typing and tissue cross-matching examination, so that should Lugmoso expire despite the necessary medical care and management and he would be found to be a suitable organ donor and his family would consent to organ donation, the organs thus donated could be detached and transplanted promptly to any compatible beneficiary.

Jennifer Misa verified on the same day, March 2, 1988, from EAMC the identity of Lugmoso and, upon her request, she was

furnished by EAMC a copy of the patient's date sheet which bears the name Angelito Lugmoso, with address at Boni Avenue, Mandaluyong. She then contacted several radio and television stations to request for air time for the purpose of locating the family of Angelito Lugmoso of Boni Avenue, Mandaluyong, who was confined at NKI for severe head injury after allegedly falling from the Cubao overpass, as well as Police Station No. 5, Eastern Police District, whose area of jurisdiction includes Boni Avenue, Mandaluyong, for assistance in locating the relatives of Angelito Lugmoso. Certifications were issued by Channel 4, ABS-CBN and GMA attesting that the request made by the NKI on March 2, 1988 to air its appeal to locate the family and relatives of Angelito Lugmoso of Boni Avenue, Mandaluyong was accommodated. A Certification was likewise issued by Police Station No. 5, Eastern Police District, Mandaluyong attesting to the fact that on March 2, 1988, at about 6:00 p.m., Jennifer Misa requested for assistance to immediately locate the family and relatives of Angelito Lugmoso and that she followed up her request until March 9, 1988.

On March 3, 1988, at about 7:00 o'clock in the morning, Dr. Ona was informed that Lugmoso had been pronounced brain dead by Dr. Abdias V. Aquino, a neurologist, and by Dr. Antonio Rafael, a neurosurgeon and attending physician of Lugmoso, and that a repeat electroencephalogram (EEG) was in progress to confirm the diagnosis of brain death. Two hours later, Dr. Ona was informed that the EEG recording exhibited a flat tracing, thereby confirming that Lugmoso was brain dead. Upon learning that Lugmoso was a suitable organ donor and that some NKI patients awaiting organ donation had blood and tissue types compatible with Lugmoso, Dr. Ona inquired from Jennifer Misa whether the relatives of Lugmoso had been located so that the necessary consent for organ donation could be obtained. As the extensive search for the relatives of Lugmoso yielded no positive result and time being of the essence in the success of organ transplantation, Dr. Ona requested Dr. Filoteo A. Alano, Executive Director of NKI, to authorize the removal of specific organs from the body of Lugmoso for transplantation purposes. Dr. Ona likewise instructed Dr. Rose Marie Rosete-Liquete to secure permission for the planned organ retrieval and transplantation from the Medico-Legal Office of the National Bureau of Investigation (NBI), on the assumption that the incident which lead to the brain injury and death of Lugmoso was a medico legal case.

On March 3, 1988, Dr. Alano issued to Dr. Ona a Memorandum, which reads as follows:

> This is in connection with the use of the human organs or any portion or portions of the human body of the deceased patient, identified as a certain Mr. Angelito Lugmoso who was brought to the National Kidney Institute on March 2, 1988 from the East Avenue Medical Center.
>
> As shown by the medical records, the said patient died on March 3, 1988 at 9:10 in the morning due to craniocerebral injury. Please make certain that your Department has exerted all reasonable efforts to locate the relatives or next of kin of the said deceased patient such as appeal through the radios and television as well as through police and other government agencies and that the NBI [Medico-Legal] Section has been notified and is aware of the case.
>
> If all the above has been complied with, in accordance with the provisions of Republic Act No. 349 as amended and P.D. 856, permission and/or authority is hereby given to the Department of Surgery to retrieve and remove the kidneys, pancreas, liver and heart of the said deceased patient and to transplant the said organs to any compatible patient who maybe in need of said organs to live and survive.

A Certification dated March 10, 1988 was issued by Dr. Maximo Reyes, Medico-Legal Officer of the NBI, stating that he received a telephone call from Dr. Liquete on March 3, 1988 at 9:15 a.m. regarding the case of Lugmoso, who was declared brain dead; that despite efforts to locate the latter's relatives, no one responded; that Dr. Liquete sought from him a second opinion for organ retrieval for donation purposes even in the absence of consent from the family of the deceased; and that he verbally agreed to organ retrieval.

At 3:45 in the afternoon of March 3, 1988, a medical team, composed of Dr. Enrique Ona, as principal surgeon, Drs. Manuel Chua-Chiaco, Jr., Rose Marie Rosete-Liquete, Aurea Ambrosio, Ludivino de Guzman, Mary Litonjua, Jaime Velasquez, Ricardo Fernando, and Myrna Mendoza, removed the heart, kidneys, pancreas, liver and spleen of Lugmoso. The medical team then transplanted a kidney and the pancreas of Lugmoso to Lee Tan Hoc and the other kidney of Lugmoso to Alexis Ambustan. The transplant operation was completed at around 11:00 o'clock in the evening of March 3, 1988.

On March 4, 1988, Dr. Antonio R. Paraiso, Head of the Cadaver Organ Retrieval Effort (CORE) program of NKI, made arrangements with La Funeraria Oro for the embalmment of the cadaver of Lugmoso good for a period of fifteen (15) days to afford NKI more time to continue searching for the relatives of the latter. On the same day, Roberto Ortega, Funeral Consultant of La Funeraria Oro, sent a request for autopsy to the NBI. The Autopsy Report and Certification of Post-Mortem Examination issued by the NBI stated that the cause of death of Lugmoso was intracranial hemorrhage secondary to skull fracture.

On March 11, 1988, the NKI issued a press release announcing its successful double organ transplantation. Aida Doromal, a cousin of plaintiff, heard the news aired on television that the donor was an eighteen (18) year old boy whose remains were at La Funeraria Oro in Quezon City. As the name of the donor sounded like Arnelito Logmao, Aida informed plaintiff of the news report.

It appears that on March 3, 1988, Arlen Logmao, a brother of Arnelito, who was then a resident of 17-C San Pedro Street, Mandaluyong, reported to Police Station No. 5, Eastern Police District, Mandaluyong that the latter did not return home after seeing a movie in Cubao, Quezon City, as evidenced by a Certification issued by said Station; and that the relatives of Arnelito were likewise informed that the latter was missing. Upon receiving the news from Aida, plaintiff and her other children went to La Funeraria Oro, where they saw Arnelito inside a cheap casket.

On April 29, 1988, plaintiff filed with the court *a quo* a complaint for damages against Dr. Emmanuel Lenon, Taurean Protectors Agency, represented by its Proprietor, Celso Santiago, National Kidney Institute, represented by its Director, Dr. Filoteo A. Alano, Jennifer Misa, Dr. Maximo Reyes, Dr. Enrique T. Ona, Dr. Manuel Chua-Chiaco, Jr., Dr. Rose Marie O. Rosete-Liquete, Dr. Aurea Z. Ambrosio, Dr. Ludivino de Guzman, Dr. Mary Litonjua, Dr. Jaime Velasquez, Dr. Ricardo Fernando, Dr. Myrna Mendoza, Lee Tan Koc, Alexis Ambustan, Dr. Antonio R. Paraiso, La Funeraria Oro, Inc., represented by its President, German E. Ortega, Roberto Ortega alias Bobby Ortega, Dr. Mariano B. Cueva, Jr., John Doe, Peter Doe, and Alex Doe in connection with the death of her son Arnelito. Plaintiff alleged that defendants conspired to remove the organs of Arnelito while the latter was still alive and that they concealed his true identity.

On January 17, 2000, the court *a quo* rendered judgment finding only Dr. Filoteo Alano liable for damages to plaintiff and dismissing the complaint against the other defendants for lack of legal basis.[3]

After finding petitioner liable for a *quasi-delict*, the Regional Trial Court of Quezon City (*RTC*) ordered petitioner to pay respondent ₱188,740.90 as actual damages; ₱500,000.00 as moral damages; ₱500,000.00 as exemplary damages; ₱300,000.00 as attorney's fees; and costs of suit. Petitioner appealed to the CA.

On March 31, 2006, the CA issued its Decision, the dispositive portion of which reads as follows:

WHEREFORE, the Decision appealed from is **AFFIRMED**, with **MODIFICATION** by **DELETING** the award of ₱188,740.90 as actual damages and **REDUCING** the award of moral damages to ₱250,000.00, the award of exemplary damages to ₱200,000.00 and the award of attorney's fees to ₱100,000.00.

SO ORDERED.[4]

Petitioner then elevated the matter to this Court *via* a petition for review on *certiorari*, where the following issues are presented for resolution:

A. WHETHER THE COURT OF APPEALS DISREGARDED EXISTING JURISPRUDENCE PRONOUNCED BY THIS HONORABLE SUPREME COURT IN HOLDING PETITIONER DR. FILOTEO ALANO LIABLE FOR MORAL AND EXEMPLARY DAMAGES AND ATTORNEY'S FEES DESPITE THE FACT THAT THE ACT OF THE PETITIONER IS NOT THE PROXIMATE CAUSE NOR IS THERE ANY FINDING THAT THE ACT OF THE PETITIONER WAS THE PROXIMATE CAUSE OF THE INJURY OR DAMAGE ALLEGEDLY SUSTAINED BY RESPONDENT ZENAIDA MAGUD-LOGMAO.

B. WHETHER THE COURT OF APPEALS GRAVELY ERRED IN REFUSING AND/OR FAILING TO DECLARE THAT

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[3] *Id*. at 73-79. (Citations omitted)

[4] *Id*. at 95. (Emphasis in the original)

PETITIONER DR. ALANO ACTED IN GOOD FAITH AND PURSUANT TO LAW WHEN HE ISSUED THE AUTHORIZATION TO REMOVE AND RETRIEVE THE ORGANS OF ANGELITO LUGMOSO (LATER IDENTIFIED TO BE IN FACT ARNELITO LOGMAO) CONSIDERING THAT NO NEGLIGENCE CAN BE ATTRIBUTED OR IMPUTED ON HIM IN HIS PERFORMANCE OF AN ACT MANDATED BY LAW.

C. WHETHER THE COURT OF APPEALS GRAVELY ERRED IN AWARDING RESPONDENT ZENAIDA MAGUD-LOGMAO MORAL AND EXEMPLARY DAMAGES AND ATTORNEY'S FEES THAT ARE NOT IN ACCORDANCE WITH AND ARE CONTRARY TO ESTABLISHED JURISPRUDENCE.[5]

The first two issues boil down to the question of whether respondent's sufferings were brought about by petitioner's alleged negligence in granting authorization for the removal or retrieval of the internal organs of respondent's son who had been declared brain dead.

Petitioner maintains that when he gave authorization for the removal of some of the internal organs to be transplanted to other patients, he did so in accordance with the letter of the law, Republic Act (*R.A.*) No. 349, as amended by Presidential Decree (*P.D.*) 856, *i.e.*, giving his subordinates instructions to exert all reasonable efforts to locate the relatives or next of kin of respondent's son. In fact, announcements were made through radio and television, the assistance of police authorities was sought, and the NBI Medico-Legal Section was notified. Thus, petitioner insists that he should not be held responsible for any damage allegedly suffered by respondent due to the death of her son and the removal of her son's internal organs for transplant purposes.

The appellate court affirmed the trial court's finding that there was negligence on petitioner's part when he failed to ensure that reasonable time had elapsed to locate the relatives of the deceased before giving the authorization to remove said deceased's internal organs for transplant purposes. However, a close

[5] *Id*. at 408-409.

examination of the records of this case would reveal that this case falls under one of the exceptions to the general rule that factual findings of the trial court, when affirmed by the appellate court, are binding on this Court. There are some important circumstances that the lower courts failed to consider in ascertaining whether it was the actions of petitioner that brought about the sufferings of respondent.[6]

The Memorandum dated March 3, 1988 issued by petitioner, stated thus:

> As shown by the medical records, the said patient died on March 3, 1988 at 9:10 in the morning due to craniocerebral injury. Please **make certain that your Department has exerted all reasonable efforts to locate the relatives or next-of-kin of the said deceased patient,** such as appeal through the radios and television, as well as through police and other government agencies and that the NBI [Medico-Legal] Section has been notified and is aware of the case.
>
> **If all the above has been complied with, in accordance with the provisions of Republic Act No. 349 as amended and P.D. 856, permission and/or authority is hereby given** to the Department of Surgery to retrieve and remove the kidneys, pancreas, liver and heart of the said deceased patient and to transplant the said organs to any compatible patient who maybe in need of said organs to live and survive.[7]

A careful reading of the above shows that petitioner instructed his subordinates to "make certain" that "all reasonable efforts" are exerted to locate the patient's next of kin, even enumerating ways in which to ensure that notices of the death of the patient would reach said relatives. It also clearly stated that permission or authorization to retrieve and remove the internal organs of the deceased was being given ONLY IF the provisions of the applicable law had been complied with. Such instructions reveal that petitioner acted prudently by directing his subordinates to exhaust all reasonable means of locating the relatives of the

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[6] *E.Y. Industrial Sales, Inc. vs. Shen Dar Electricity and Machinery Co., Ltd.,* G.R. No. 184850, October 20, 2010, 634 SCRA 363.

[7] Exhibits "19" and "33", records, p. 1019. (Emphasis supplied)

deceased. He could not have made his directives any clearer. He even specifically mentioned that **permission is only being granted IF** the Department of Surgery has complied with all the requirements of the law. Verily, petitioner could not have been faulted for having full confidence in the ability of the doctors in the Department of Surgery to comprehend the instructions, obeying all his directives, and acting only in accordance with the requirements of the law.

Furthermore, as found by the lower courts from the records of the case, the doctors and personnel of NKI disseminated notices of the death of respondent's son to the media and sought the assistance of the appropriate police authorities as early as March 2, 1988, even before petitioner issued the Memorandum. Prior to performing the procedure for retrieval of the deceased's internal organs, the doctors concerned also the sought the opinion and approval of the Medico-Legal Officer of the NBI.

Thus, there can be no cavil that petitioner employed reasonable means to disseminate notifications intended to reach the relatives of the deceased. The only question that remains pertains to the sufficiency of time allowed for notices to reach the relatives of the deceased.

If respondent failed to immediately receive notice of her son's death because the notices did not properly state the name or identity of the deceased, fault cannot be laid at petitioner's door. The trial and appellate courts found that it was the EAMC, who had the opportunity to ascertain the name of the deceased, who recorded the wrong information regarding the deceased's identity to NKI. The NKI could not have obtained the information about his name from the patient, because as found by the lower courts, the deceased was already unconscious by the time he was brought to the NKI.

Ultimately, it is respondent's failure to adduce adequate evidence that doomed this case. As stated in *Otero v. Tan*,[8] "[i]n civil cases, it is a basic rule that the party making allegations

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[8] G.R. No. 200134, August 15, 2012, 678 SCRA 583.

has the burden of proving them by a preponderance of evidence. The parties must rely on the strength of their own evidence and not upon the weakness of the defense offered by their opponent."[9] Here, there is no proof that, indeed, the period of around 24 hours from the time notices were disseminated, cannot be considered as reasonable under the circumstances. They failed to present any expert witness to prove that given the medical technology and knowledge at that time in the 1980's, the doctors could or should have waited longer before harvesting the internal organs for transplantation.

Verily, the Court cannot, in conscience, agree with the lower court. Finding petitioner liable for damages is improper. It should be emphasized that the internal organs of the deceased were removed only after he had been declared brain dead; thus, the emotional pain suffered by respondent due to the death of her son cannot in any way be attributed to petitioner. Neither can the Court find evidence on record to show that respondent's emotional suffering at the sight of the pitiful state in which she found her son's lifeless body be categorically attributed to petitioner's conduct.

WHEREFORE, the petition is **GRANTED.** The Decision of the Court of Appeals, dated March 31, 2006, is **REVERSED** and **SET ASIDE.** The complaint against petitioner is hereby **DISMISSED**.

SO ORDERED.

Velasco, Jr. (Chairperson), Abad, and *Mendoza, JJ.,* concur.

Leonen, J., see concurring opinion.

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[9] *Id*. at 598.

CONCURRING OPINION

"What you leave behind is not
what is engraved in stone monuments,
but what is woven in the lives of others."

Pericles

LEONEN, *J.*:

On February 28, 2014, the Philippines broke the Guinness World Record for the most number of people signing up to be organ donors within an hour on a single site. A total of 3,548 people trooped to the Polytechnic University of the Philippines to pledge their organs as part of the "I'm a Lifeline" campaign of the Philippine Network for Organ Sharing under the Department of Health.[1]

This court is now faced with the opportunity to confront the issues concerning organ donation and transplantation for the first time since the procedure was introduced in this country in 1983.

Before us is a petition for review under Rule 45 of the Rules of Court, assailing the decision[2] of the Court of Appeals dated March 31, 2006 and its resolution dated November 22, 2006 in CA-G.R. CV No. 67399 entitled *Zenaida Magud-Logmao v. Dr. Emmanuel Lenon, et al.* The appellate court affirmed the decision[3] dated January 17, 2000 of the Regional Trial Court of Quezon City, Branch 100, which found Dr. Filoteo A. Alano,

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[1] *PH beat world record for most number of organ donors in one hour*, February 28, 2014, Philippine Daily Inquirer, <http://globalnation.inquirer.net/99654/ph-beat-world-record-for-most-number-of-organ-donors-in-one-hour> (visited April 3, 2014).

[2] *Rollo*, pp. 71-96, penned by Justice Marina L. Buzon and concurred in by Justice Aurora Santiago-Lagman and Justice Arcangelita Romilla-Lontok.

[3] *Id*. at 103-111, penned by Hon. Justice Mariano C. Del Castillo, then the Presiding Judge of the Branch 100 of the Regional Trial Court of Quezon City.

then the Executive Director of the National Kidney Institute,[4] liable for damages to Zenaida Logmao.

The facts, as found by the lower courts, are as follows:

On March 1, 1988, at 9:50 p.m., Arnelito Logmao, 18 years old, was brought to the East Avenue Medical Center in Quezon City by two sidewalk vendors who allegedly saw him fall from the overpass near Farmer's Market, Cubao.[5] The security guards of the hospital noted in their blotter that when he was admitted to the hospital, he was drunk.[6] He gave his name as Arnelito Logmao and his address as Boni Avenue, Mandaluyong.[7]

In the emergency room, Arnelito Logmao was conscious and was interviewed by Dr. Paterno Cabrera, the duty resident physician.[8] The patient's data sheet, prepared by Dr. Cabrera, identified the patient as Angelito Lugmoso (and not Arnelito Logmao) of Boni Avenue, Mandaluyong.[9] He was subjected to an x-ray examination, but the examination did not show him suffering from any skull fractures or head injuries.[10]

At around 4:00 a.m. on March 2, 1988, the patient developed generalized seizures, and his condition progressively deteriorated.[11] Admission to the Intensive Care Unit (ICU) and mechanical ventilatory support became necessary, but there was no vacancy at the East Avenue Medical Center ICU.[12] A resident physician at National Kidney Institute, Dr. Emmanuel Lenon,

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[4] This hospital is now known as the National Kidney and Transplant Institute or NKTI.

[5] *Rollo*, p. 73; CA decision, p. 3.

[6] *Id*. at 103; RTC decision, p. 1.

[7] *Id*.

[8] *Id*.

[9] *Id*. at 73; CA decision, p. 3.

[10] *Id*.

[11] *Id*.

[12] *Id*.

who was then conducting rounds at East Avenue Medical Center, suggested that the patient be transferred to the National Kidney Institute.[13] After arrangements were made, the patient was transferred to the National Kidney Institute at 10:10 a.m. on the same day.[14]

When the patient arrived at the National Kidney Institute, his name was recorded as Angelito Lugmoso.[15] As the patient was admitted without any relatives by his side, Jennifer B. Misa, Transplant Coordinator, was asked to locate the patient's family by enlisting police and media assistance.[16] Dr. Enrique T. Ona, Chairman of the Department of Surgery, observed that the patient's brain injury was so severe that it manifested symptoms of brain death.[17] Upon his request, the Laboratory Section conducted a tissue typing and tissue cross-matching examination on the patient.[18] The request was done on the basis that if the deceased patient is found to be a suitable organ donor and has his family's consent, the organs could be harvested and transplanted promptly to any of the compatible beneficiaries.[19]

Jennifer Misa verified the identity of the patient with the East Avenue Medical Center on the same day or March 2, 1988.[20] Upon her request, the hospital furnished her a copy of the patient's data sheet which bore the name Angelito Lugmoso with Boni Avenue, Mandaluyong, as his address.[21] She then contacted several radio and television stations and requested for airtime in her search for the family of Angelito Lugmoso.[22] Her request was

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[13] *Id.*

[14] *Id.*

[15] *Id.* at 74.

[16] *Id.*

[17] *Id.*

[18] *Id.*

[19] *Id.*

[20] *Id.*

[21] *Id.*

[22] *Id.*

granted by Channel 4, ABS-CBN, and GMA.[23] Police Station No. 5, Eastern Police District, Mandaluyong, issued a certification attesting that on March 2, 1988, at about 6:00 p.m., Jennifer Misa requested for assistance to immediately locate the family and relatives of Angelito Lugmoso and that she followed up her request until March 9, 1988.[24]

On March 3, 1988 at about 7:00 a.m., Dr. Ona was informed that the patient was pronounced brain dead by Dr. Abdias V. Aquino, a neurologist, and Dr. Antonio Rafael, the attending physician of the patient, and that another electroencephalogram (EEG) was in progress to confirm the diagnosis.[25] At about 9:00 a.m., Dr. Ona was informed that the EEG recording showed a flat tracing, confirming that the patient was brain dead.[26]

Upon learning that the patient was a suitable organ donor and that there were some National Kidney Institute patients who were compatible donees, Dr. Ona inquired from Jennifer Misa whether the patient's relatives have been located so that the necessary consent for organ donation could be obtained.[27]

Since no relatives of Angelito Lugmoso could be found despite the ongoing search, Dr. Ona requested Dr. Filoteo A. Alano, Executive Director of the National Kidney Institute, to authorize the removal of specific organs from the body for transplantation purposes.[28] Dr. Ona likewise requested Dr. Rose Marie Rosete-Liquete to secure permission from the National Bureau of Investigation's Medico-Legal Office for organ retrieval and transplantation, on the assumption that the incident which led to the death of the patient was a medico-legal case.[29]

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[23] *Id*.

[24] *Id*. at 75; CA decision, p. 5.

[25] *Id*.

[26] *Id*.

[27] *Id*.

[28] *Id*.

[29] *Id*.

On March 3, 1988, Dr. Alano issued to Dr. Ona a memorandum which states:

> This is in connection with the use of the human organs or any portion or portions of the human body of the deceased patient, identified as a certain Mr. Angelito Lugmoso who was brought to the National Kidney Institute on March 2, 1988 from the East Avenue Medical Center.
>
> As shown by the medical records, the said patient died on March 3, 1988 at 9:10 in the morning due to craniocerebral injury. **Please make certain that your Department has exerted all reasonable efforts to locate the relatives or next of kin of the said deceased patient such as appeal through the radios and television as well as through police and other government agencies and that the NBI Medicolegal Section has been notified and is aware of the case.**
>
> **If all the above has been complied with, in accordance with the provisions of Republic Act No. 349 as amended and P.D. 856, permission and/or authority is hereby given to the Department of Surgery to retrieve and remove the kidneys, pancreas, liver and heart of the said deceased patient and to transplant the said organs to any compatible patient who maybe in need of said organs to live and survive.**[30] (Emphasis supplied)

Dr. Maximo Reyes, Medico-Legal Officer of the National Bureau of Investigation, issued a certification dated March 10, 1988, stating that he received a telephone call from Dr. Liquete on March 3, 1988 at 9:15 a.m. regarding the case.[31] He certified that despite efforts to locate Angelito Lugmoso's relatives, no one responded. Dr. Liquete also sought from Dr. Reyes a second opinion on organ donation even in the absence of consent from the family of the deceased patient, and Dr. Reyes verbally agreed to the organ retrieval.[32]

On March 3, 1988 at 3:45 p.m., a medical team led by Dr. Ona removed the heart, kidneys, pancreas, liver, and spleen of

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[30] *Id*. at 76; CA decision, p. 6.

[31] *Id*. at 76-77; CA decision, pp. 6-7.

[32] *Id*. at 77; CA decision, p. 7.

the deceased patient.[33] The medical team then transplanted a kidney and the pancreas to Lee Tan Koc and the other kidney to Alexis Ambustan.[34] The transplant operation was completed around 11:00 p.m. on the same day.[35]

On March 4, 1988, Dr. Antonio R. Paraiso, Head of the Cadaver Organ Retrieval Effort (CORE) program of the National Kidney Institute, made arrangements with La Funeraria Oro for the embalming of the cadaver for up to 15 days to give the National Kidney Institute more time to continue searching for the relatives of the deceased patient.[36]

On March 11, 1988, the National Kidney Institute issued a press release announcing its first successful double organ transplantation.[37] Aida Doromal, a relative of Arnelito's mother, Zenaida Logmao, saw the news on television that the donor was an 18-year-old boy whose remains were laid at La Funeraria Oro in Quezon City.[38] Since the name of the donor sounded like Arnelito Logmao, Aida informed Zenaida.[39] Upon receiving the news from Aida, Zenaida and her other children went to La Funeraria Oro where they were able to retrieve Arnelito's body.[40]

On April 29, 1988, Zenaida filed with the Regional Trial Court a complaint for damages against Dr. Lenon, Taurean Protectors Agency, National Kidney Institute, Jennifer Misa, Dr. Alano, Dr. Reyes, Dr. Ona, Dr. Liquete, the entire medical team that conducted the transplant, Lee Tan Koc, Alexis Ambustan, Dr. Paraiso, La Funeraria Oro, Dr. Mariano B. Cueva, Jr., John Doe, Peter Doe, and Alex Doe in connection with the

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[33] *Id*.

[34] *Id*.

[35] *Id*.

[36] *Id*.

[37] *Id*. at 78; CA decision, p. 8.

[38] *Id*.

[39] *Id*.

[40] *Id*.

death of her son, Arnelito.[41] She alleged that all of them conspired to remove the organs of Arnelito when he was still alive and that they concealed his true identity.[42]

On January 17, 2000, the Regional Trial Court rendered judgment[43] dismissing the complaint against all defendants but finding Dr. Alano liable for damages. The trial court found Dr. Alano negligent under Article 2176 of the Civil Code for authorizing the retrieval of the deceased patient's organs without first exerting reasonable efforts to locate his relatives, in direct violation of the law. According to the trial court:

> x x x. **In the natural course of things, a search or inquiry of anything requires at least two days of probing and seeking to be actually considered as having made said earnest efforts.** But a one-day campaign, especially with regard to a subject matter as important as a person's disposal into the afterlife certainly warrants a longer time for investigation. Indeed, what is "reasonable" is a relative term, dependent on the attendant circumstances of the case (Philippine Law Dictionary, citing *Katague vs. Lagana*, CV 70164, March 7, 1986). Here, what was involved was the detachment of the vital organs of plaintiff's 18-year[-]old son from his body without her knowledge and consent, and which act was upon the authority issued by defendant Dr. Alano as head of the hospital. The matter at hand was of a very sensitive nature that an inquiry of less than one day cannot be deemed as sufficient and reasonable to exculpate him from liability. x x x.[44] (Emphasis supplied)

Dr. Alano appealed[45] the ruling with the Court of Appeals.

On March 31, 2006, the Court of Appeals rendered its decision[46] affirming the ruling of the Regional Trial Court with modifications.

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[41] *Id*.at 78-79.

[42] *Id*. at 79; CA decision, p. 9.

[43] *Id*. at 103-111.

[44] *Id*. at 106; RTC decision, p. 4.

[45] *Id*. at 112-144.

[46] *Id*. at 71-96.

The appellate court deleted the award for actual damages representing the expenses for autopsy fees, and wake and funeral services, since Arnelito's family would have still incurred those expenses even if no organ retrieval was done on the body.[47] It also deleted the award of compensatory damages of ₱50,000.00 per organ retrieved since it was not shown that Dr. Alano was the recipient of the organ transplants or that he received any consideration from the transplant patients.[48] Finally, it affirmed the award of damages but reduced moral damages from ₱500,000.00 to ₱250,000.00, exemplary damages from ₱500,000.00 to ₱200,000.00, and attorney's fees from ₱300,000.00 to ₱100,000.00.[49]

Dr. Alano now comes before this court via a petition for review on certiorari. He argues[50] that there was no legal basis for the Court of Appeals to hold him liable for damages since there was no finding that he was the proximate cause of the injury or damage sustained by Zenaida. He also argues that he acted in good faith and pursuant to law when he issued the authorization for the organ retrieval.

Thus, the issue before this court is whether Dr. Alano should be held liable for his alleged negligence in authorizing the removal and retrieval of Arnelito's internal organs without Zenaida's consent.

I agree with the *ponencia* that Dr. Alano should not be found liable, but I take this opportunity to further expound on the issues presented to this court.

As a general rule, only questions of law are to be considered in a petition for review under Rule 45. There are, however, recognized exceptions to the rule, one of which is when "the Court of Appeals fails to notice certain relevant facts

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[47] *Id.* at 92; CA decision, p. 22.

[48] *Id.*

[49] *Id.* at 93-95; CA decision, pp. 23-25.

[50] *Id.* at 401-459, memorandum for the petitioner.

which, if properly considered, will justify a different conclusion x x x."[51]

Dr. Alano's acts were not reckless, negligent or unreasonable. It was not his acts that caused the alleged injury to the deceased patient's relatives. Considering the circumstances that he had to face, the search he ordered for the deceased patient's relatives were all that ordinary prudence required. His retrieval of the deceased patient's organs was done legally and after allowing a reasonable time to lapse. The conclusions of the trial court and the appellate court were, therefore, correctly reversed and set aside.

The elements of a quasi-delict

In cases involving quasi-delict and torts, the plaintiff complains that the acts of a defendant caused him or her injury. In order to be actionable, the act should have been committed with the intention of injuring the plaintiff or was committed recklessly or negligently or one which, even when done with the proper care, held such high risk for injury to others that it will be presumed by law to be actionable.

The lower courts are all in agreement that Dr. Alano's participation in the organ retrieval constituted a quasi-delict under Article 2176 of the Civil Code for which he should be liable for damages.

This conclusion is erroneous.

Article 2176 may not be the proper legal basis for the cause of action. This article defines a quasi-delict as:

Article 2176. Whoever by act or omission causes damage to another, there being fault or negligence, is obliged to pay for the damage done. Such fault or negligence, if there is no pre-existing contractual relation between the parties, is called a quasi-delict and is governed by the provisions of this Chapter.

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[51] *Spouses Alcazar v. Evelyn Arante*, G.R. No. 177042, December 10, 2012, 687 SCRA 507, 516 [Per *J.* Peralta, Third Division], *citing Vallacar Transit, Inc. v. Catubig*, G.R. No. 175512, May 30, 2011, 649 SCRA 281, 294 [Per *J.* Leonardo-De Castro, First Division].

The elements of a quasi-delict are: (1) an act or omission; (2) the presence of fault or negligence in the performance or non-performance of the act; (3) injury; (4) a causal connection between the negligent act and the injury; and (5) no pre-existing contractual relation. Jurisprudence, however, specifies four (4) essential elements: "(1) duty; (2) breach; (3) injury; and (4) proximate causation."[52]

As a general rule, any act or omission coming under the purview of Article 2176 gives rise to a cause of action under quasi-delict. This, in turn, gives the basis for a claim of damages. Verily, Article 1157 of the Civil Code provides as follows:

Article 1157. Obligations arise from:

(1) Law;

(2) Contracts;

(3) Quasi-contracts;

(4) Acts or omissions punished by law; and

(5) **Quasi-delicts**. (Emphasis supplied)

Article 2176 is not an all-encompassing enumeration of all actionable wrongs which can give rise to the liability for damages. Under the Civil Code, acts done in violation of Articles 19, 20, and 21 will also give rise to damages. The provisions state as follows:

Article 19. Every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith.

Article 20. Every person who, contrary to law, willfully or negligently causes damage to another, shall indemnify the latter for the same.

Article 21. Any person who willfully causes loss or injury to another in a manner that is contrary to morals, good customs, or public policy shall compensate the latter for the damage.

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[52] *Garcia, Jr. v. Salvador*, 547 Phil. 463, 470 (2007) [Per J. Ynares-Santiago, Third Division]; *Lucas v. Tuaño*, 604 Phil. 98, 121(2009) [Per J. Chico-Nazario, Third Division].

Baksh v. Court of Appeals[53] elaborates on the distinctions:

> x x x. *Quasi-delict*, known in Spanish legal treatises as *culpa aquiliana*, is a civil law concept while *torts* is an Anglo-American or common law concept. *Torts* is much broader than *culpa aquiliana* because it includes not only negligence, but international criminal acts as well such as assault and battery, false imprisonment and deceit. In the general scheme of the Philippine legal system envisioned by the Commission responsible for drafting the New Civil Code, intentional and malicious acts, with certain exceptions, are to be governed by the Revised Penal Code while negligent acts or omissions are to be covered by Article 2176 of the Civil Code. **In between these opposite spectrums are injurious acts which, in the absence of Article 21, would have been beyond redress. Thus, Article 21 fills that vacuum. It is even postulated that together with Articles 19 and 20 of the Civil Code, Article 21 has greatly broadened the scope of the law on civil wrongs; it has become much more supple and adaptable than the Anglo-American law on torts**.[54] (Emphasis supplied)

Yuchengco v. Manila Chronicle Publishing Corporation[55] further elaborates on tort based on the concept of abuse of right:

> The principle of abuse of rights as enshrined in Article 19 of the Civil Code provides:
>
> > Art. 19. Every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith.
>
> This provision of law sets standards which must be observed in the exercise of one's rights as well as in the performance of its duties, to wit: to act with justice; give everyone his due; and observe honesty and good faith.

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[53] G.R. No. 97336, February 19, 1993, 219 SCRA 115 [Per *J.* Davide, Third Division].

[54] *Id*. at p. 127-128, *citing* Report of the Code Commission, 161-162, and A. M. TOLENTINO, COMMENTARIES AND JURISPRUDENCE ON THE CIVIL CODE OF THE PHILIPPINES 72 (vol. 1, 1985).

[55] G.R. No. 184315, November 28, 2011, 661 SCRA 392 [Per *J.* Peralta, Special Third Division].

In *Globe Mackay Cable and Radio Corporation v. Court of Appeals*, it was elucidated that **while Article 19 "lays down a rule of conduct for the government of human relations and for the maintenance of social order, it does not provide a remedy for its violation. Generally, an action for damages under either Article 20 or Article 21 would be proper."** The Court said:

> One of the more notable innovations of the New Civil Code is the codification of "some basic principles that are to be observed for the rightful relationship between human beings and for the stability of the social order." [REPORT ON THE CODE COMMISSION ON THE PROPOSED CIVIL CODE OF THE PHILIPPINES, p. 39]. The framers of the Code, seeking to remedy the defect of the old Code which merely stated the effects of the law, but failed to draw out its spirit, incorporated certain fundamental precepts which were "designed to indicate certain norms that spring from the fountain of good conscience" and which were also meant to serve as "guides for human conduct [that] should run as golden threads through society, to the end that law may approach its supreme ideal, which is the sway and dominance of justice." *(Id.)* Foremost among these principles is that pronounced in Article 19 which provides:
>
> Art. 19. Every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith.
>
> **This article, known to contain what is commonly referred to as the principle of abuse of rights, sets certain standards which must be observed not only in the exercise of one's rights, but also in the performance of one's duties. These standards are the following: to act with justice; to give everyone his due; and to observe honesty and good faith. The law, therefore, recognizes a primordial limitation on all rights; that in their exercise, the norms of human conduct set forth in Article 19 must be observed. A right, though by itself legal because recognized or granted by law as such, may nevertheless become the source of some illegality. When a right is exercised in a manner which does not conform with the norms enshrined in Article 19 and results in damage to another, a legal wrong is thereby committed for which the wrongdoer must be held responsible.** But while Article 19 lays down a rule of conduct for the government of human

relations and for the maintenance of social order, it does not provide a remedy for its violation. Generally, an action for damages under either Article 20 or Article 21 would be proper.

Corollarily, **Article 20 provides that "every person who, contrary to law, willfully or negligently causes damage to another shall indemnify the latter for the same." It speaks of the general sanctions of all other provisions of law which do not especially provide for its own sanction.** When a right is exercised in a manner which does not conform to the standards set forth in the said provision and results in damage to another, a legal wrong is thereby committed for which the wrongdoer must be responsible. Thus, if the provision does not provide a remedy for its violation, an action for damages under either Article 20 or Article 21 of the Civil Code would be proper.[56] (Emphasis supplied)

Article 19 is the general rule which governs the conduct of human relations. By itself, it is not the basis of an actionable tort. Article 19 describes the degree of care required so that an actionable tort may arise when it is alleged together with Article 20 or Article 21.

Article 20 concerns violations of existing law as basis for an injury. It allows recovery should the act have been willful or negligent. Willful may refer to the intention to do the act and the desire to achieve the outcome which is considered by the plaintiff in tort action as injurious. Negligence may refer to a situation where the act was consciously done but without intending the result which the plaintiff considers as injurious.

Article 21, on the other hand, concerns injuries that may be caused by acts which are not necessarily proscribed by law. This article requires that the act be willful, that is, that there was an intention to do the act and a desire to achieve the outcome. In cases under Article 21, the legal issues revolve around whether such outcome should be considered a legal injury on the part of

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[56] *Id*. at 402-403, *citing GF Equity, Inc. v. Valenzona*, 501 Phil. 153, 164 (2005) [Per J. Carpio Morales, Third Division]; *Globe Mackay Cable and Radio Corporation v. Court of Appeals*, 257 Phil. 783 (1989) [Per J. Cortes, Third Division]; *Manuel v. People*, 512 Phil. 818, 847 (2005) [Per J. Callejo, Sr., Second Division].

the plaintiff or whether the commission of the act was done in violation of the standards of care required in Article 19.

Article 2176 covers situations where an injury happens through an act or omission of the defendant. When it involves a positive act, the intention to commit the outcome is irrelevant. The act itself must not be a breach of an existing law or a pre-existing contractual obligation. What will be considered is whether there is "fault or negligence" attending the commission of the act which necessarily leads to the outcome considered as injurious by the plaintiff. The required degree of diligence will then be assessed in relation to the circumstances of each and every case.

Article 2176 should not have been the basis for the cause of action in this case. Rather, it should have been Article 20, which is applicable when there is a violation of law.

The law that is applicable is the third paragraph of Section 2 of Republic Act No. 349,[57] as amended by Republic Act No. 1056,[58] which provides for a way to determine substituted informed consent for deceased patients for purposes of organ donation.

The doctrine of informed consent

The doctrine of informed consent was introduced in this jurisdiction only very recently in *Dr. Li v. Spouses Soliman*.[59]

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[57] Entitled "AN ACT TO LEGALIZE PERMISSIONS TO USE HUMAN ORGANS OR ANY PORTION OR PORTIONS OF THE HUMAN BODY FOR MEDICAL, SURGICAL, OR SCIENTIFIC PURPOSES, UNDER CERTAIN CONDITIONS," approved on May 17, 1949. This law has since been superseded by Republic Act No. 7170 or "The Organ Donation Act of 1991," approved on January 7, 1992. Section 9 of Republic Act No. 7170 now specifically provides that the search for the donor's relatives must be done within 48 hours.

[58] Entitled "AN ACT TO AMEND REPUBLIC ACT NUMBERED THREE HUNDRED AND FORTY-NINE, ENTITLED "AN ACT TO LEGALIZE PERMISSIONS TO USE HUMAN ORGANS OR ANY PORTION OR PORTIONS OF THE HUMAN BODY FOR MEDICAL, SURGICAL, OR SCIENTIFIC PURPOSES, UNDER CERTAIN CONDITIONS," "approved on June 12, 1954.

[59] G.R. No. 165279, June 7, 2011, 651 SCRA 32 [Per *J.* Villarama, *En Banc*, *CJ* Corona, *JJ.* Perez and Abad, concurring; *JJ.* Brion, Nachura,

This court ruled that liability may arise in cases where the physician fails to obtain the consent of the patient before performing any medical procedure, thus:

> The doctrine of informed consent within the context of physician-patient relationships goes far back into English common law. As early as 1767, doctors were charged with the tort of "battery" (*i.e.*, an unauthorized physical contact with a patient) if they had not gained the consent of their patients prior to performing a surgery or procedure. In the United States, the seminal case was *Schoendorff v. Society of New York Hospital* which involved unwanted treatment performed by a doctor. Justice Benjamin Cardozo's oft-quoted opinion upheld the basic right of a patient to give consent to any medical procedure or treatment: "Every human being of adult years and sound mind has a right to determine what shall be done with his own body; and a surgeon who performs an operation without his patient's consent, commits an assault, for which he is liable in damages." From a purely ethical norm, **informed consent evolved into a general principle of law that a physician has a duty to disclose what a reasonably prudent physician in the medical community in the exercise of reasonable care would disclose to his patient as to whatever grave risks of injury might be incurred from a proposed course of treatment, so that a patient, exercising ordinary care for his own welfare, and faced with a choice of undergoing the proposed treatment, or alternative treatment, or none at all, may intelligently exercise his judgment by reasonably balancing the probable risks against the probable benefits.**
>
> Subsequently, in *Canterbury v. Spence*[,] the court observed that the duty to disclose should not be limited to medical usage as to arrogate the decision on revelation to the physician alone. Thus, respect for the patient's right of self-determination on particular therapy demands a standard set by law for physicians rather than one which physicians may or may not impose upon themselves. x x x.[60]

Leonardo-De Castro, Bersamin, and Mendoza, concurring in the result; *JJ*. Carpio, Carpio Morales, Velasco, Peralta, and Sereno, dissenting].

[60] *Id.* at 56-57, *citing Schoendorff v. Society of New York Hospital*, 105 N.E. 92, 93 (N.Y. 1914); *Black's Law Dictionary,* Fifth Edition, p. 701, *citing Ze Barth v. Swedish Hospital Medical Center*, 81 Wash.2d 12, 499 P.2d 1, 8; *Canterbury v. Spence*, 464 F.2d 772 C.A.D.C., 1972.

Those who consent to using their organs upon their death for the benefit of another can make their consent known prior to their death by following the requirements of the law. Should a patient die prior to making his or her informed consent known, the law provides a list of persons who may consent on his or her behalf, that is, "substituted" informed consent.

Since the incident in this case occurred in 1988, Republic Act No. 349, as amended by Republic Act No. 1056, is the law that applies. Section 2 of the law states that:

> SEC. 2. The authorization referred to in section one of this Act must: be in writing; specify the person or institution granted the authorization; the organ, part or parts to be detached, the specific use or uses to which the organ, part or parts are to be employed; and, signed by the grantor and two disinterested witnesses.
>
> If the grantor is a minor or an incompetent person, the authorization may be executed by his guardian with the approval of the court; in default thereof, by the legitimate father or mother, in the order, named. Married women may grant the authority referred to in section one of this Act, without the consent of the husband.
>
> After the death of the person, authority to use human organs or any portion or portions of the human body for medical, surgical or scientific purposes may also be granted by his nearest relative or guardian at the time of his death or in the absence thereof, by the person or head of the hospital, or institution having custody of the body of the deceased: **Provided, however, That the said person or head of the hospital or institution has exerted *reasonable efforts* to locate the aforesaid guardian or relative.**
>
> A copy of every such authorization must be furnished the Secretary of Health. (Emphasis supplied)

Under this law, consent to organ retrieval after the patient's death may be given first and foremost by the patient's nearest relative or guardian at the time of death. It is only in the event that these relatives cannot be contacted despite reasonable efforts that the head of the hospital or institution having custody of the body may give consent for organ retrieval on behalf of the patient. Failing this, liability for damages arises.

Considering that Republic Act No. 349, as amended, does not provide a remedy in case of violation, an application of the doctrine of informed consent vis-à-vis Article 20 of the Civil Code may give rise to an action for damages. In this case, Dr. Alano must first be shown to have acted *willfully* and *negligently* to the damage and prejudice of Zenaida.

Petitioner did not willfully or negligently, in a manner contrary to law, authorize the retrieval of the organs

Dr. Alano did not violate the provisions of the law willfully or negligently. In accordance with the requirements of the third paragraph of Section 2 of Republic Act No. 349, as amended, he caused the discharge of "reasonable efforts" to locate the relatives, allowed for a reasonable time to pass, and harvested the organs with care and prudence.

Negligence has been defined by law as "[t]he failure to observe, for the protection of the interests of another person, that degree of care, precaution and vigilance which the circumstances justly demand, whereby such other person suffers injury."[61]

In *Picart v. Smith*,[62] the test for negligence is as follows:

> The test by which to determine the existence of negligence in a particular case may be stated as follows: **Did the defendant in doing the alleged negligent act use that reasonable care and caution which an ordinarily prudent person would have used in the same situation?** If not, then he is guilty of negligence. The law here in effect adopts the standard supposed to be supplied by the imaginary conduct of the discreet *paterfamilias* of the Roman law. The existence of negligence in a given case is not determined by reference to the personal judgment of the actor in the situation before him. The law considers what would be reckless, blameworthy, or negligent in the man of ordinary intelligence and prudence and determines liability by that.

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[61] *United States v. Barias* 23 Phil. 434, 437 (1912) [Per *J.* Carson, *En Banc*], *citing* Judge Cooley in his work on Torts, 3rd ed., 1324.

[62] 37 Phil. 809 (1918) [Per *J.* Street, *En Banc*].

The question as to what would constitute the conduct of a prudent man in a given situation must of course be always determined in the light of human experience and in view of the facts involved in the particular case. Abstract speculation cannot here be of much value but this much can be profitably said: Reasonable men govern their conduct by the circumstances which are before them or known to them. They are not, and are not supposed to be, omniscient of the future. Hence they can be expected to take care only when there is something before them to suggest or warn of danger. **Could a prudent man, in the case under consideration, foresee harm as a result of the course actually pursued?** If so, it was the duty of the actor to take precautions to guard against that harm. Reasonable foresight of harm, followed by the ignoring of the suggestion born of this prevision, is always necessary before negligence can be held to exist. Stated in these terms, the proper criterion for determining the existence of negligence in a given case is this: Conduct is said to be negligent when a prudent man in the position of the tortfeasor would have foreseen that an effect harmful to another was sufficiently probable to warrant his foregoing the conduct or guarding against its consequences.[63] (Emphasis supplied)

As correctly found by the majority, Zenaida failed to prove that Dr. Alano did not exercise the reasonable care and caution of an ordinarily prudent person.

In compliance with the duty reposed on him by the law, Dr. Alano, as the Executive Director of the National Kidney Institute, directed Jennifer B. Misa, Transplant Coordinator, to locate Arnelito's relatives. Radio announcements over Radyo ng Bayan and DZMM Radio, televised notices on Channels 2, 7, 9, and 13, and a police blotter in the Eastern Police District No. 5, Mandaluyong, were done on March 2, 1988, with a published advertisement also appearing on the People's Journal on March 20, 1988.[64] Assistance was also sought from the National Bureau of Investigation. These findings were, in fact, adopted by the trial court. Dr. Enrique T. Ona also testified that the search for the deceased patient's relatives continued even after the organ retrieval, thus:

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[63] *Id*. at 813.

[64] *Rollo*, p. 106; RTC decision, p. 4.

Q: After the retrieval of the organs from the patient and the transplantation of the organs to Mr. Ambustan and Tan [K]oc Lee, did the hospital stop in its effort to locate the family of the patient, Mr. Witness?

A: Since this patient is a John Doe and even after we had retrieved the organs and transplanted it to the 2 recipients, I was also made aware that no relatives could still be located. **Specific instruction were [sic] given to the transplant coordinator to continue looking for the relatives**.[65] (Emphasis supplied)

The trial court and the appellate court, however, took exception to the period of time taken by Dr. Alano in conducting the search for the deceased patient's relatives before he authorized the organ retrieval.

What the lower courts failed to consider was that this was an unusual situation wherein time was of the essence. Organ retrieval must always take into account the viability of the organs.

As explained by Dr. Ona in his testimony before the trial court:

Q: Does the time have any factor also with respect to the viability of these organs, Mr. Witness[?]

A: Yes, sir.

Q: Will you please explain this, Mr. Witness?

A **When we remove the organs say, the kidney from the cadaver we put that into [a] special solution for preservation and ideally we would like to transplant that kidney within 24 hours although oftentimes we extend it to 48 hours and even stretching it to 72 hours, sir.**

Court: I just want to clarify this issue.

Q: Is there any particular reason why the retrieval of the organs have to be done even when the patient is not yet dead, as what we know heart beating [sic] stops but even at that stage when classified as brain dead, why the rush to open it up, is there any particular reason or could it refer perhaps

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[65] *Id*. at 323-324; TSN, October 2, 1995, pp. 35-36.

to the successful operation maybe for the organs to fit well to the rec[i]pient?

A: Yes, Your Honor. **The viability of the organ as I mentioned earlier the kidney is viable for several hours, as I mentioned 24 hours, 48 hours up to 72 hours but for the liver, Your [Honor], during that time in 1988 the liver can be preserved only for about 6 to 8 hours and for the heart it should be connected for 4 hours, Your Honor.**

Q: So, in this particular case, the kidney, how many hours more or less?

A: At that time it was stretched into 24 hours, Your Honor and the pa[n]creas maybe 4 hours so that it is the leng[th] of time when the organs most likely to be viable after that most likely did not function anymore [sic].

Q: But you do retrieval also to those dead on arrival, is that not?

A: In this particular case, Your Honor, it is possible for example the dead on arrival is brought to the emergency room, the preparation of the operating room and the getting of [sic] the consent it will take time, Your Honor, so in this particular case, Your Honor there is no more heart beat that cannot be viable anymore[.][66] (Emphasis supplied)

This testimony is supported by several studies, which tend to show that the viability of organs in an organ donation may depend on the length of time between the declaration of brain death and organ retrieval.

One study shows that widespread physiological changes occur during brain death. "In addition to acute changes, which if untreated lead to rapid deterioration and cardiac arrest (even if ventilation is continued), there are ongoing generalized inflammatory and hormonal changes associated with brain death which adversely affect donor organ function and propensity to rejection."[67] Another

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[66] *Id*. at 375-379; TSN, October 2, 1995, pp. 87-91.

[67] D.W. McKeown, R.S. Bonser, and J.A. Kellum, *Management of the heartbeating brain-dead organ donor*, British Journal of Anaesthesia 108 (S1): i96-i107 (2012).

study[68] shows that the time period between declaration of brain death and organ retrieval was a "significant predictive factor"[69] in recipient mortality for cardiac transplants. There is also a study[70] that shows that "[t]here are clear data that both [brain death] and prolonged [brain death duration] result in [kidney] graft damage, and successful organ retrieval after [brain death] definitely relies on intensive donor management."[71]

Upon a showing by the Transplant Coordinator that the deceased patient's relatives could not be found despite all her efforts in locating them, Dr. Alano exercised his professional judgment and ordered the retrieval bearing in mind the short length of time the organs could be viable after the declaration of brain death. He exercised all the reasonable care and caution that an ordinarily prudent man would have exercised in the same situation.

Dr. Alano, therefore, should not have been found to be negligent. He did not violate Article 20 of the Civil Code because he complied with all his duties in Republic Act No. 349, as amended.

There is no causal connection between the alleged negligent act and the damage suffered by respondent

The trial court, by using the codal definition of a quasi-delict, identified the act or omission as that of authorizing the retrieval of the deceased patient's organs without seeking permission

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[68] S. Ramjug, N. Hussain, and N. Yonan, *Prolonged time between donor brain death and organ retrieval results in an increased risk of mortality in cardiac transplant recipients*, Interactive CardioVascular and Thoracic Surgery 12, 938-942 (2011).

[69] *Id*. at 939.

[70] K. Kunert, S. Weiß, K. Kotsch, and J. Pratschke, *Prolonged brain death duration – does it improve graft quality?*, Transplant International 2010 European Society for Organ Transplantation 24, 12-13 (2011).

[71] *Id*. at 13.

from his relatives; the presence of negligence as the failure to exert reasonable efforts in searching for the deceased patient's relatives; and the damage pertaining to Zenaida's discovery of her son's lifeless body "mangled, robbed of its vital organs and x x x sewn up like x x x a rag doll."[72] The court also found no pre-existing contractual relation.

The trial court is mistaken. Clearly, there is no causal connection between the alleged negligent act of Dr. Alano and the damage suffered by Zenaida.

First, Zenaida alleged before the trial court that the damage she suffered was the loss of her son's life. The trial court, however, conceded that "the extent of Logmao's injuries were such that the possibility of survival would have been highly improbable, if not impossible x x x."[73] It then concluded that there was still damage suffered by Zenaida, in that her son's lifeless body was "mangled, robbed of its vital organs and x x x sewn up like some rag doll, without her knowledge, much more her consent."[74] The Court of Appeals agreed, stating that "the pain and anguish of a mother in seeing the lifeless body of her son like a slaughtered pig in the funeral parlor x x x is more than one can take."[75]

The "pain and anguish"[76] of Zenaida indeed may have resulted from the *loss of her son*. However, Dr. Alano or any of his subordinates did not cause the loss of her son's life. Even if Dr. Alano did not order the organ retrieval, Zenaida would still find the body of her son lifeless.

It was, therefore, erroneous to impute the emotional suffering of Zenaida as being caused by Dr. Alano's failure to exert reasonable efforts to locate her before ordering the organ retrieval.

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[72] *Rollo*, p. 107; RTC decision, p. 5.

[73] *Id*.

[74] *Id*.

[75] *Id*. at 93-94.

[76] *Id*. at 93.

Second, the failure to locate Zenaida to secure her permission for the organ retrieval was not caused by Dr. Alano.

The records show that the difficulty in locating Zenaida stemmed from the erroneous information found on the deceased's patient data sheet, which indicated his name as Angelito Lugmoso, not Arnelito Logmao. It was the staff of East Avenue Medical Center, not Dr. Alano and the staff of the National Kidney Institute, which provided the erroneous information on the patient data sheet.

It can be conceded that there was a duty on the part of the National Kidney Institute to verify the information on the patient data sheet with the patient himself. However, when Arnelito was transferred from East Avenue Medical Center to the National Kidney Institute, he was already "intubated and ambu-bagging support was provided x x x."[77] This means that he would not have been coherent enough or even conscious enough to be able to answer any query by the medical staff. The staff of the National Kidney Institute would have had no choice but to rely on the information provided to them by East Avenue Medical Center considering the urgency of Arnelito's situation.

The erroneous information on the patient data sheet was eventually the cause of the failure of the Transplant Coordinator to locate Zenaida. The radio and television announcements, together with the newspaper advertisements, were rendered futile by the fact that they were simply looking for the wrong person. Even if the Transplant Coordinator spent more than 24 hours looking for the deceased patient's relatives, it was doubtful whether they could have been found, considering that they were looking for the relatives of Angelito Lugmoso, not Arnelito Logmao.

Respondent should not be awarded damages

Moral damages were awarded by the lower courts on the basis that it was Dr. Alano's alleged negligence which caused the emotional suffering of Zenaida. This is erroneous.

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[77] *Id*. at 73.

The pertinent provisions of the Civil Code on moral damages are:

Article 2217. Moral damages include physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation, and similar injury. Though incapable of pecuniary computation, moral damages may be recovered if they are the proximate result of the defendant's wrongful act or omission.

Article 2219. Moral damages may be recovered in the following and analogous cases:

(1) A criminal offense resulting in physical injuries;

(2) Quasi-delicts causing physical injuries;

(3) Seduction, abduction, rape, or other lascivious acts;

(4) Adultery or concubinage;

(5) Illegal or arbitrary detention or arrest;

(6) Illegal search;

(7) Libel, slander or any other form of defamation;

(8) Malicious prosecution;

(9) Acts mentioned in Article 309;

(10) Acts and actions referred to in Articles 21, 26, 27, 28, 29, 30, 32, 34, and 35.

The parents of the female seduced, abducted, raped, or abused, referred to in No. 3 of this article, may also recover moral damages.

The spouse, descendants, ascendants, and brothers and sisters may bring the action mentioned in No. 9 of this article, in the order named.

It has already been established that Zenaida's emotional suffering was not caused by the acts of Dr. Alano. He also did not commit any act in violation of Articles 19, 20 or 21 of the Civil Code. This is also not a case wherein the alleged quasi-delict resulted in physical injuries. The lower courts are also in agreement that Dr. Alano did not cause the death of Zenaida's son. Neither is this case analogous to any of the situations

mentioned in the provision. Contrary to the ruling of the trial court, this situation is also not covered by Article 309 of the Civil Code, which states:

> Article 309. Any person who shows disrespect to the dead, or wrongfully interferes with a funeral shall be liable to the family of the deceased for damages, material and moral.

The organ retrieval performed by the National Kidney Institute cannot be termed as "disrespect to the dead." Organ donation is allowed by law. A sterile medical operation surely is not tantamount to grave robbery or mutilation.

Since Zenaida has not proven her claim to moral damages, she is also not entitled to exemplary damages.

Article 2234 of the Civil Code provides:

> Article 2234. While the amount of the exemplary damages need not be proved, the plaintiff must show that he is entitled to moral, temperate or compensatory damages before the court may consider the question of whether or not exemplary damages should be awarded. x x x.

Since the award of exemplary damages is not justified, there is no reason to award attorney's fees, in accordance with Article 2208 of the Civil Code, which allows the award of attorney's fees only "when exemplary damages are awarded."

ACCORDINGLY, I **CONCUR** and vote to **GRANT** the petition.

SECOND DIVISION

[G.R. No. 182153. April 7, 2014]

TUNG HO STEEL ENTERPRISES CORPORATION, *petitioner, vs.* **TING GUAN TRADING CORPORATION,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; *RES JUDICATA*; ELUCIDATED.— *Res judicata* refers to the rule that a final judgment or decree on the merits by a court of competent jurisdiction is conclusive on the rights of the parties or their privies in all later suits on all points and matters determined in the former suit. For *res judicata* to apply, the final judgment must be on the merits of the case which means that the court has unequivocally determined the parties' rights and obligations with respect to the causes of action and the subject matter of the case.

2. ID.; JURISDICTION; ONCE ATTACHED CANNOT BE OUSTED UNTIL IT FINALLY DISPOSES OF THE CASE.— The court's jurisdiction, once attached, cannot be ousted until it finally disposes of the case. When a court has already obtained and is exercising jurisdiction over a controversy, its jurisdiction to proceed to the final determination of the case is retained. A judge is competent to act on the case while its incidents remain pending for his disposition.

3. ID.; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW MAY BE FILED WITHIN 5 DAYS FROM DENIAL OF MOTION FOR RECONSIDERATION FILED IN DUE TIME AFTER NOTICE OF THE JUDGMENT.— [U]nder Section 2, Rule 45 of the Rules of Court, Tung Ho may file a petition for review on *certiorari* before the Court within (15) days from the denial of its motion for reconsideration filed in due time after notice of the judgment.

4. ID.; ID.; ID.; FACTUAL FINDINGS OF TRIAL COURT, RESPECTED.— This Court is not a trier of facts; we cannot re-examine, review or re-evaluate the evidence and the factual review made by the lower courts. In the absence of compelling

reasons, we will not deviate from the rule that factual findings of the lower courts are final and binding on this Court.

5. ID.; ID.; JURISDICTION OVER THE PERSON OF DEFENDANT; VOLUNTARY APPEARANCE IS EQUIVALENT TO SERVICE OF SUMMONS AND ANY QUESTION THEREON MUST BE RAISED ON THE FIRST MOTION TO DISMISS.— Ting Guan's failure to raise the alleged lack of jurisdiction over its person in the first motion to dismiss is fatal to its cause. Ting Guan voluntarily appeared before the RTC when it filed a motion to dismiss and a "supplemental motion to dismiss" without raising the RTC's lack of jurisdiction over its person. In *Anunciacion v. Bocanegra,* we categorically stated that the defendant should raise the affirmative defense of lack of jurisdiction over his person in **the very first motion to dismiss**. Failure to raise the issue of improper service of summons in the first motion to dismiss is a waiver of this defense and cannot be belatedly raised in succeeding motions and pleadings. x x x In *Lingner & Fisher GMBH vs. Intermediate Appellate Court*, we enunciated the policy that the courts should not dismiss a case simply because there was an improper service of summons. The lower courts should be cautious in haphazardly dismissing complaints on this ground alone considering that the trial court can cure this defect and order the issuance of *alias* summons on the proper person in the interest of substantial justice and to expedite the proceedings.

6. ID.; ID.; MOTION TO DISMISS; OMNIBUS MOTION RULE; DISCUSSED.— Under the omnibus motion rule, a motion attacking a pleading, order, judgment, or proceeding shall include all objections **then available**. The purpose of this rule is to obviate multiplicity of motions and to discourage dilatory motions and pleadings. Party litigants should not be allowed to reiterate identical motions, speculating on the possible change of opinion of the courts or of the judges thereof. In this respect, Section 1, Rule 16 of the Rules of Court requires the defendant to file a motion to dismiss within the time for, but before filing the answer to the complaint or pleading asserting a claim. Section 1, Rule 11 of the Rules of Court, on the other hand, commands the defendant to file his answer within fifteen (15) days after service of summons, unless a different period is fixed by the trial court. Once the trial court denies the motion,

the defendant should file his answer within the balance of fifteen (15) days to which he was entitled at the time of serving his motion, but the remaining period cannot be less than five (5) days computed from his receipt of the notice of the denial. Instead of filing an answer, the defendant may opt to file a motion for reconsideration. Only after the trial court shall have denied the motion for reconsideration does the defendant become bound to file his answer. If the defendant fails to file an answer within the reglementary period, the plaintiff may file a motion to declare the defendant in default. This motion shall be with notice to the defendant and shall be supported by proof of the failure. The trial court's denial of the motion to dismiss is not a license for the defendant to file a Rule 65 petition before the CA. An order denying a motion to dismiss cannot be the subject of a petition for *certiorari* as the defendant still has an adequate remedy before the trial court – *i.e.,* to file an answer and to subsequently appeal the case if he loses the case. As exceptions, the defendant may avail of a petition for *certiorari* if the ground raised in the motion to dismiss is lack of jurisdiction over the person of the defendant or over the subject matter. x x x The Rules of Court only allows the filing of a motion to dismiss *once*.

7. ID.; ID.; JUDGMENTS; ENTRY OF JUDGMENTS AND FINAL RESOLUTIONS; PROPER ONLY IF NO APPEAL OR MOTION FOR RECONSIDERATION WAS TIMELY FILED; ELUCIDATED.— Under the Rules of Court, entry of judgment may only be made if no appeal or motion for reconsideration was timely filed. In the proceedings before the CA, if a motion for reconsideration (including a partial motion for reconsideration) is timely filed by the proper party, execution of the CA's judgment or final resolution shall be stayed. This rule is applicable even to proceedings before the Supreme Court, as provided in Section 4, Rule 56 of the Rules of Court. x x x Significantly, the rule that a timely motion for reconsideration stays the execution of the assailed judgment is in accordance with Rule 51, Section 10 (Rules governing the CA proceedings) which provides that "entry of judgments may only be had if there is no appeal or motion for reconsideration timely filed. The date when the judgment or final resolution becomes executory shall be deemed as the date of its entry." Incidentally, this procedure also governs before Supreme Court proceedings. x x x Based on the above

> considerations, the Court would not be in error if it applies its ruling in the case of *Realty Sales Enterprises, Inc. and Macondray Farms, Inc. v. Intermediate Appellate Court, et al.* where the Court, in a *per curiam* resolution, ruled that an entry of judgment may be recalled or lifted *motu proprio* when it is clear that the decision assailed of has not yet become final under the rules. x x x According to this ruling, the *motu proprio* recall or setting aside of the entry of final judgment was proper and "entirely consistent with the inherent power of every court *inter alia* to amend and control its process and orders so as to make them conformable to law and justice [Sec. 5(g), Rule 135, Rules of Court,]. That the recall has in fact served to achieve a verdict consistent with law and justice is clear from the judgment subsequently rendered on the merits."

APPEARANCES OF COUNSEL

Platon Martines Flores San Pedro and Leaño for petitioner.
Zosa & Quijano Law Offices for respondent.

D E C I S I O N

BRION, *J.*:

We resolve the petition for review on *certiorari*[1] filed by petitioner Tung Ho Steel Enterprises Corp. *(Tung Ho)* to challenge the July 5, 2006 decision[2] and the March 12, 2008 resolution[3] of the Court of Appeals (*CA*) in CA-G.R. SP No. 92828.

The Factual Antecedents

Tung Ho is a foreign corporation organized under the laws of Taiwan, Republic of China.[4] On the other hand, respondent

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[1] Dated May 7, 2008 and filed under Rule 45 of the Rules of Court; *rollo*, pp. 16-43.

[2] *Id.* at 52-69; penned by Associate Justice Jose L. Sabio, Jr., and concurred in by Associate Justices Rosalinda Asuncion-Vicente and Sesinando E. Villon.

[3] *Id.* at 114-115.

[4] *Id.* at 18, 47.

Ting Guan Trading Corp. *(Ting Guan)* is a domestic corporation organized under the laws of the Philippines.[5]

On January 9, 2002, Ting Guan obligated itself under a contract of sale to deliver heavy metal scrap iron and steel to Tung Ho. Subsequently, Tung Ho filed a request for arbitration before the ICC International Court of Arbitration *(ICC)* in Singapore after Ting Guan failed to deliver the full quantity of the promised heavy metal scrap iron and steel.[6]

The ICC ruled in favor of Tung Ho on June 18, 2004 and ordered Ting Guan to pay Tung Ho the following: (1) actual damages in the amount of US$ 659,646.15 with interest of 6% per annum from December 4, 2002 until final payment; (2) cost of arbitration in the amount of US $ 47,000.00; and (3) legal costs and expenses in the amount of NT $ 761,448.00 and US $ 34,552.83.[7]

On October 24, 2004, Tung Ho filed an action against Ting Guan for the recognition and enforcement of the arbitral award before the Regional Trial Court *(RTC)* of Makati, Branch 145. Ting Guan moved to dismiss the case based on Tung Ho's lack of capacity to sue and for prematurity. Ting Guan subsequently filed a supplemental motion to dismiss based on improper venue. Ting Guan argued that the complaint should have been filed in Cebu where its principal place of business was located.[8]

The Proceedings before the RTC

The RTC denied Ting Guan's motion to dismiss in an order dated May 11, 2005. Ting Guan moved to reconsider the order and raised the RTC's alleged lack of jurisdiction over its person as additional ground for the dismissal of the complaint. Ting Guan insisted that Ms. Fe Tejero, on whom personal service was served, was not its corporate secretary and was not a person

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[5] *Id*. at 18.

[6] *Ibid*.

[7] *Rollo* in G.R. No. 176110, pp. 117-151.

[8] *Rollo*, pp. 53-54.

allowed under Section 11, Rule 14 of the Rules of Court to receive a summons. It also asserted that Tung Ho cannot enforce the award in the Philippines without violating public policy as Taiwan is not a signatory to the New York Convention.[9]

The RTC denied the motion in an order dated November 21, 2005 and ruled that Ting Guan had voluntarily submitted to the court's jurisdiction when it raised other arguments apart from lack of jurisdiction in its motion to dismiss.

The Proceedings before the CA

Ting Guan responded to the denials by filing a petition for *certiorari* before the CA with an application for the issuance of a temporary restraining order and a writ of preliminary injunction.[10]

In its *Memorandum,* Tung Ho argued that a Rule 65 petition is not the proper remedy to assail the denial of a motion to dismiss. It pointed out that the proper recourse for Ting Guan was to file an answer and to subsequently appeal the case. It also posited that beyond the reglementary period for filing an answer, Ting Guan was barred from raising other grounds for the dismissal of the case. Tung Ho also claimed that the RTC acquired jurisdiction over the person of Ting Guan since the return of service of summons expressly stated that Tejero was a corporate secretary.[11]

In its decision dated July 5, 2006, the CA **dismissed the complaint for lack of jurisdiction over the person of Ting Guan**. The CA held that Tung Ho failed to establish that Tejero was Ting Guan's corporate secretary. The CA also ruled that a petition for *certiorari* is the proper remedy to assail the denial of a motion to dismiss if the ground raised in the motion is lack of jurisdiction. Furthermore, any of the grounds for the dismissal of the case can be raised in a motion to dismiss provided that

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[9] *Id.* at 20.

[10] *Id*. at 54-56.

[11] *Id*. at 57-60.

the grounds were raised before the filing of an answer. The CA likewise ruled that Tung Ho properly filed the complaint before the RTC-Makati.[12]

Subsequently, **both parties moved to partially reconsider the CA decision**. Tung Ho reiterated that there was proper service of summons. On the other hand, Ting Guan sought to modify the CA decision with respect to the proper venue of the case. The CA denied Ting Guan's motion for partial reconsideration in an order dated December 5, 2006.[13]

Ting Guan immediately proceeded to file a petition for review on *certiorari* before this Court to question the CA's rulings as discussed below. In the interim (on February 11, 2008), Tung Ho (whose motion for reconsideration of the CA decision was still pending with that court) filed a "Motion to Supplement and Resolve Motion for Reconsideration" before the CA. In this motion, Tung Ho prayed for the issuance of an *alias* summons if the service of summons had indeed been defective, but its motion proved unsuccessful.[14]

It was not until March 12, 2008, after the developments described below, that the CA finally denied Tung Ho's partial motion for reconsideration for lack of merit.

Ting Guan's Petition before this Court (G.R. No. 176110)

Ting Guan's petition before this Court was docketed as G.R. No. 176110. Ting Guan argued that the dismissal of the case should be based on the following additional grounds: *first,* the complaint was prematurely filed; *second,* the foreign arbitral award is null and void; *third,* the venue was improperly laid in Makati; and *lastly,* the enforcement of the arbitral award was against public policy.[15]

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[12] *Id*. at 66-68.

[13] *Id*. at 24-25.

[14] *Id*. at 89-98.

[15] *Rollo* in G.R. No. 176110, pp. 4-29.

On April 24, 2007, Tung Ho filed its Comment dated April 24, 2007 in G.R. No. 176110, touching on the issue of jurisdiction, albeit lightly. Tung Ho complained in its Comment that Ting Guan engaged in dilatory tactics when Ting Guan belatedly raised the issue of jurisdiction in the motion for reconsideration before the RTC. However, Tung Ho did not affirmatively seek the reversal of the July 5, 2006 decision. Instead, it merely stated that Ting Guan's petition "cannot be dismissed on the ground that the summons was wrongfully issued as the petitioner can always move for the issuance of an *alias* summons to be served." Furthermore, Tung Ho only prayed that Ting Guan's petition be denied in G.R. No. 176110 and for other just and equitable reliefs. In other words, Tung Ho failed to effectively argue its case on the merits before the Court in G.R. No. 176110.

On June 18, 2007, we issued our Resolution denying Ting Guan's petition for lack of merit. On November 12, 2007, we also denied Ting Guan's motion for reconsideration. **On January 8, 2008, the Court issued an entry of judgment in Ting Guan's petition, G.R. No. 176110.**

After the entry of judgment, we referred the matter back to the RTC for further proceedings. On January 16, 2008, **the RTC declared the case closed and terminated.** Its order stated:

> Upon examination of the entire records of this case, an answer with caution was actually filed by the respondent to which a reply was submitted by the petitioner. Since the answer was with the qualification that respondent is not waiving its claim of lack of jurisdiction over its person on the ground of improper service of summons upon it and that its petition to this effect filed before the Court of Appeals was acted favorably and this case was dismissed on the aforementioned ground and it appearing that the Decision as well as the Order denying the motion for reconsideration of the petitioner now final and executory, the Order of November 9, 2007 referring this petition to the Court Annexed Mediation for possible amicable settlement is recalled it being moot and academic. This case is now considered closed and terminated.

On February 6, 2008, Tung Ho moved to reconsider the RTC order. Nothing in the records shows whether the RTC granted or denied this motion for reconsideration.

Tung Ho's Petition before this Court (G.R. No. 182153)

On May 7, 2008, Tung Ho seasonably filed a petition for review on *certiorari* to seek the reversal of the **July 5, 2006 decision** and the **March 12, 2008 resolution** of the CA. **This is the present G.R. No. 182153 now before us**.

Tung Ho reiterates that the RTC acquired jurisdiction over the person of Ting Guan. It also claims that the return of service of summons is a *prima facie* evidence of the recited facts *i.e.*, that Tejero is a corporate secretary as stated therein and that the sheriff is presumed to have regularly performed his official duties in serving the summons. In the alternative, Tung Ho argues that Ting Guan's successive motions before the RTC are equivalent to voluntary appearance. Tung Ho also prays for the issuance of *alias* summons to cure the alleged defective service of summons.[16]

Respondent Ting Guan's Position (G.R. No. 182153)

In its *Comment,* Ting Guan submits that the appeal is already barred by *res judicata.* It also stresses that the Court has already affirmed with finality the dismissal of the complaint.[17] Ting Guan also argues that Tung Ho raises a factual issue that is beyond the scope of a petition for review on *certiorari* under Rule 45 of the Rules of Court.[18]

The Issues

This case presents to us the following issues:

1) Whether the present petition is barred by *res judicata*; and

[16] *Id.* at 31-42.

[17] *Id.* at 126-130.

[18] *Id.* at 132.

2) Whether the trial court acquired jurisdiction over the person of Ting Guan, specifically:

   a) Whether Tejero was the proper person to receive the summons; and

   b) Whether Ting Guan made a voluntary appearance before the trial court.

The Court's Ruling

We find the petition meritorious.

I. The Court is not precluded from ruling on the jurisdictional issue raised in the petition

A. The petition is not barred by res judicata

Res judicata refers to the rule that a final judgment or decree on the merits by a court of competent jurisdiction is conclusive on the rights of the parties or their privies in all later suits on all points and matters determined in the former suit.[19] For *res judicata* to apply, the final judgment must be on the merits of the case which means that the court has unequivocally determined the parties' rights and obligations with respect to the causes of action and the subject matter of the case.[20]

Contrary to Ting Guan's position, our ruling in G.R. No. 176110 does not operate as *res judicata* on Tung Ho's appeal; G.R. No. 176110 did not conclusively rule on all issues raised by the parties in this case so that this Court would now be barred from taking cognizance of Tung Ho's petition. Our disposition in G.R. No. 176110 only dwelt on technical or collateral aspects of the case, and not on its merits. Specifically, we did not rule on whether Tung Ho may enforce the foreign arbitral award against Ting Guan in that case.

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[19] *Taganas v. Emuslan and Standard Insurance Co., Inc.,* 457 Phil. 306-307, 311-312 (2003).

[20] *Spouses Antonio v. Sayman vda. de Monje,* G.R. No. 149624, September 29, 2010, 631 SCRA 471-472, 479-480.

B. The appellate court cannot be ousted of jurisdiction until it finally disposes of the case

The court's jurisdiction, once attached, cannot be ousted until it finally disposes of the case. When a court has already obtained and is exercising jurisdiction over a controversy, its jurisdiction to proceed to the final determination of the case is retained.[21] A judge is competent to act on the case while its incidents remain pending for his disposition.

The CA was not ousted of its jurisdiction with the promulgation of G.R. No. 176110. The July 5, 2006 decision has not yet become final and executory for the reason that there remained a pending incident before the CA – the resolution of Tung Ho's motion for reconsideration – when this Court promulgated G.R. No. 176110. In this latter case, on the other hand, we only resolved procedural issues that are divorced from the present jurisdictional question before us. Thus, what became immutable in G.R. No. 176110 was the ruling that Tung Ho's complaint is not dismissible on grounds of prematurity, nullity of the foreign arbitral award, improper venue, and the foreign arbitral award's repugnance to local public policy. This leads us to the conclusion that in the absence of any ruling on the merits on the issue of jurisdiction, *res judicata* on this point could not have set in.

C. Tung Ho's timely filing of a motion for reconsideration and of a petition for review on certiorari prevented the July 5, 2006 decision from attaining finality

Furthermore, under Section 2, Rule 45 of the Rules of Court, Tung Ho may file a petition for review on *certiorari* before the Court within (15) days from the denial of its motion for

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[21] *Alindao v. Joson,* G.R. No. 114132, November 14, 1996, 264 SCRA 212, 221; *Bernate v. Court of Appeals,* G.R. No. 107741, October 18, 2006, 263 SCRA 325-326, 339; and *Aruego, Jr. v. Court of Appeals*, G.R. No. 112193, March 13, 1996,254 SCRA 712, 719-720.

reconsideration filed in due time after notice of the judgment. Tung Ho's timely filing of a motion for reconsideration before the CA and of a Rule 45 petition before this Court prevented the July 5, 2006 CA decision from attaining finality. For this Court to deny Tung Ho's petition would result in an anomalous situation where a party litigant is penalized and deprived of his fair opportunity to appeal the case by faithfully complying with the Rules of Court.

II. The trial court acquired jurisdiction over the person of Ting Guan

A. Tejero was not the proper person to receive the summons

Nonetheless, we see no reason to disturb the lower courts' finding that Tejero was not a corporate secretary and, therefore, was not the proper person to receive the summons under Section 11, Rule 14 of the Rules of Court. This Court is not a trier of facts; we cannot re-examine, review or re-evaluate the evidence and the factual review made by the lower courts. In the absence of compelling reasons, we will not deviate from the rule that factual findings of the lower courts are final and binding on this Court.[22]

B. Ting Guan voluntarily appeared before the trial court

However, we cannot agree with the **legal conclusion** that the appellate court reached, given the **established facts**.[23] To our mind, Ting Guan voluntarily appeared before the trial court in

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[22] *Co v. Vargas,* G.R. No. 195167, November 16, 2011, 660 SCRA 451-452, 459-460; and *Diesel Construction Co., Inc. v. UPSI Property Holdings, Inc.*, G.R. Nos. 154885 and 154937, March 24, 2008, 549 SCRA 14, 15, 30-31.

[23] In *Chu v. Caparas,* G.R. No. 175428, April 15, 2013, we stated:

A question of law arises when there is doubt as to what the law is on a certain state of facts, while there is a question of fact when the doubt arises as to the truth or falsity of the alleged facts.

view of the procedural recourse that it took before that court. Its voluntary appearance is equivalent to service of summons.[24]

As a basic principle, courts look with disfavor on piecemeal arguments in motions filed by the parties. Under the omnibus motion rule, a motion attacking a pleading, order, judgment, or proceeding shall include all objections **then available**.[25] The purpose of this rule is to obviate multiplicity of motions and to discourage dilatory motions and pleadings. Party litigants should not be allowed to reiterate identical motions, speculating on the possible change of opinion of the courts or of the judges thereof.

In this respect, Section 1, Rule 16 of the Rules of Court requires the defendant to file a motion to dismiss within the time for, but before filing the answer to the complaint or pleading asserting a claim. Section 1, Rule 11 of the Rules of Court, on the other hand, commands the defendant to file his answer within fifteen (15) days after service of summons, unless a different period is fixed by the trial court. Once the trial court denies the motion, the defendant should file his answer within the balance of fifteen (15) days to which he was entitled at the time of serving his motion, but the remaining period cannot be less than five (5) days computed from his receipt of the notice of the denial.[26]

Instead of filing an answer, the defendant may opt to file a motion for reconsideration. Only after the trial court shall have denied the motion for reconsideration does the defendant become bound to file his answer.[27] If the defendant fails to file an answer within the reglementary period, the plaintiff may file a motion to declare the defendant in default. This motion shall be with notice to the defendant and shall be supported by proof of the failure.[28]

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[24] RULES OF COURT, Rule 14, Section 20.

[25] RULES OF COURT, Rule 15, Section 8.

[26] RULES OF COURT, Rule 16, Section 4.

[27] *Narciso v. Garcia*, G.R. No. 196877, November 21, 2012, 686 SCRA 249.

[28] RULES OF COURT, Rule 9, Section 3.

The trial court's denial of the motion to dismiss is not a license for the defendant to file a Rule 65 petition before the CA. An order denying a motion to dismiss cannot be the subject of a petition for *certiorari* as the defendant still has an adequate remedy before the trial court — *i.e.*, to file an answer and to subsequently appeal the case if he loses the case.[29] As exceptions, the defendant may avail of a petition for *certiorari* if the ground raised in the motion to dismiss is lack of jurisdiction over the person of the defendant[30] or over the subject matter.[31]

We cannot allow and simply passively look at Ting Guan's blatant disregard of the rules of procedure in the present case. The Rules of Court only allows the filing of a motion to dismiss *once*.[32] Ting Guan's *filing of successive motions to dismiss*, under the guise of "supplemental motion to dismiss" or "motion for reconsideration," is not only improper but also dilatory.[33] Ting Guan's belated reliance on the improper service of summons was a mere afterthought, if not a bad faith ploy to avoid the foreign arbitral award's enforcement which is still at its preliminary stage after the lapse of almost a decade since the filing of the complaint.

Furthermore, Ting Guan's failure to raise the alleged lack of jurisdiction over its person in the first motion to dismiss is fatal to its cause. Ting Guan voluntarily appeared before the RTC when it filed a motion to dismiss and a "supplemental motion to dismiss" without raising the RTC's lack of jurisdiction over its person. In *Anunciacion v. Bocanegra*,[34] we categorically

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[29] *De Zuzuarregui, Jr. v. Court of Appeals*, 264 Phil. 1124, 1127 (1990); *Aurelio v. Aurelio*, G.R. No. 175367, June 6, 2011, 650 SCRA 571-572.

[30] *Philamlife v. Breva*, 484 Phil. 824-831 (2004).

[31] *De Zuzuarregui, Jr. v. Court of Appeals, supra* note 29.

[32] Section 8, Rule 15 of the Rules of Court in relation to Section 1, Rule 9 of the Rules of Court.

[33] *Boston Equity Resources, Inc. v. Court of Appeals*, G.R. No. 173946, June 19, 2013.

[34] G.R. No. 152496, July 30, 2009, 594 SCRA 319, 329.

stated that the defendant should raise the affirmative defense of lack of jurisdiction over his person in **the very first motion to dismiss**. Failure to raise the issue of improper service of summons in the first motion to dismiss is a waiver of this defense and cannot be belatedly raised in succeeding motions and pleadings.

Even assuming that Ting Guan did not voluntarily appear before the RTC, the CA should have ordered the RTC to issue an *alias* summons instead. In *Lingner & Fisher GMBH vs. Intermediate Appellate Court*,[35] we enunciated the policy that the courts should not dismiss a case simply because there was an improper service of summons. The lower courts should be cautious in haphazardly dismissing complaints on this ground alone considering that the trial court can cure this defect and order the issuance of *alias* summons on the proper person in the interest of substantial justice and to expedite the proceedings.

III. A Final Note

As a final note, we are not unaware that the present case has been complicated by its unique development. The complication arose when the CA, instead of resolving the parties' separate partial motions for reconsideration in one resolution, proceeded to first resolve and to deny Ting Guan's partial motion. Ting Guan, therefore, went to this Court *via* a petition for review on *certiorari* while Tung Ho's partial motion for reconsideration was still unresolved.

Expectedly, Ting Guan did not question the portions of the CA decision favorable to it when it filed its petition with this Court. Instead, Ting Guan reiterated that the CA should have included additional grounds to justify the dismissal of Tung Ho's complaint with the RTC. The Court denied Ting Guan's petition, leading to the entry of judgment that improvidently followed. Later, the CA denied Tung Ho's partial motion for reconsideration, prompting Tung Ho's own petition with this Court, which is the present G.R. No. 182153.

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[35] G.R. No. 63557, October 28, 1983, 125 SCRA 523, 527.

Under the Rules of Court, entry of judgment may only be made if no appeal or motion for reconsideration was timely filed.[36] In the proceedings before the CA, if a motion for reconsideration (including a partial motion for reconsideration[37]) is timely filed by the proper party, execution of the CA's judgment or final resolution shall be stayed.[38] This rule is applicable even to proceedings before the Supreme Court, as provided in Section 4, Rule 56 of the Rules of Court.[39]

In the present case, Tung Ho timely filed its motion for reconsideration with the CA and seasonably appealed the CA's rulings with the Court through the present petition (G.R. No. 182153).

To now recognize the finality of the Resolution of Ting Guan petition (G.R. No. 176110) based on its entry of judgment and to allow it to foreclose the present meritorious petition of Tung Ho, would of course cause unfair and unjustified injury to Tung Ho. *First*, as previously mentioned, the Ting Guan petition did

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[36] Rules of Court, Rule 51, Section 10. Entry of judgments and final resolutions. – If no appeal or motion for new trial or reconsideration is filed within the time provided in these Rules, the judgment or final resolution shall forthwith be entered by the clerk in the book of entries of judgments. The date when the judgment or final resolution becomes executory shall be deemed as the date of its entry. The records shall contain the dispositive part of the judgment or final resolution has become final and executory.

[37] *Id*., Rule 37, **Section 7**. – A partial motion for reconsideration is an available remedy in our procedure. Thus, if the grounds for a motion (for reconsideration) appear to the court to affect the issues as to only a part, or less than all of the matter in controversy, or only one, or less than all, of the parties to it, the court may order a new trial or grant reconsideration **as to such issues if severable** without interfering with the judgment or final order upon the rest.

[38] *Id*., Rule 52, Section 4. Stay of execution. – The pendency of a motion for reconsideration shall stay the execution of the judgment or final resolution sought to be reconsidered unless the court, for good reasons, shall direct otherwise.

[39] Procedure. – The appeal shall be governed by and disposed of in accordance with the applicable provisions of the Constitution, laws, 38 Rules 45, 48, Sections 1, 2, and 5 to 11 of Rules 51, 52 and this Rule.

not question or assail the full merits of the CA decision. It was Tung Ho, the party aggrieved by the CA decision, who substantially questioned the merits of the CA decision in its petition; this petition showed that the CA indeed committed error and Tung Ho's complaint before the RTC should properly proceed. *Second*, the present case is for the enforcement of an arbitral award involving millions of pesos. Tung Ho already won in the foreign arbitration and the present case is simply for the enforcement of this arbitral award in our jurisdiction. *Third*, and most importantly, Tung Ho properly and timely availed of the remedies available to it under the Rules of Court, which provide that filing and pendency of a motion for reconsideration stays the execution of the CA judgment. Therefore, at the time of the entry of judgment in G.R. No. 176110 in the Supreme Court on January 8, 2008, the CA decision which the Court affirmed was effectively not yet be final.

Significantly, the rule that a timely motion for reconsideration stays the execution of the assailed judgment is in accordance with Rule 51, Section 10 (Rules governing the CA proceedings) which provides that "entry of judgments may only be had if there is no appeal or motion for reconsideration timely filed. The date when the judgment or final resolution becomes executory shall be deemed as the date of its entry." Incidentally, this procedure also governs before Supreme Court proceedings.[40] Following these rules, therefore, the pendency of Tung Ho's MR with the CA made the entry of the judgment of the Court in the Ting Guan petition premature and inefficacious for not being final and executory.

Based on the above considerations, the Court would not be in error if it applies its ruling in the case of *Realty Sales Enterprises, Inc. and Macondray Farms, Inc. v. Intermediate Appellate Court, et al*.[41] where the Court, in a *per curiam* resolution, ruled that an entry of judgment may be recalled or lifted *motu proprio* when it is clear that the decision assailed of has not yet become final under the rules:

[40] Pursuant to Section 4, Rule 56 of the Rules of Court.

[41] G.R. No. 67451, April 25, 1989.

The March 6, 1985 resolution denying reconsideration of the January 30, 1985 resolution was, to repeat, not served on the petitioners until March 20, 1985 — and therefore the Jan. 30, 1985 resolution could not be deemed final and executory until one (1) full day (March 21) had elapsed, or on March 22, 1985 (assuming inaction on petitioners' part.) The entry of judgment relative to the January 30, 1985 resolution, made on March 18, 1985, was therefore premature and inefficacious. **An entry of judgment does not make the judgment so entered final and executory when it is not so in truth. An entry of judgment merely records the fact that a judgment, order or resolution has become final and executory; but it is not the operative act that makes the judgment, order or resolution final and executory.** In the case at bar, the entry of judgment on March 18, 1985 did not make the January 30, 1985 resolution subject of the entry, final and executory. As of the date of entry, March 18, 1985, notice of the resolution denying reconsideration of the January 30, 1985 resolution had not yet been served on the petitioners or any of the parties, since March 18, 1985 was also the date of the notice (and release) of the March 6, 1985 resolution denying reconsideration.

According to this ruling, the *motu proprio* recall or setting aside of the entry of final judgment was proper and "entirely consistent with the inherent power of every court *inter alia* to amend and control its process and orders so as to make them conformable to law and justice [Sec. 5(g), Rule 135, Rules of Court]. That the recall has in fact served to achieve a verdict consistent with law and justice is clear from the judgment subsequently rendered on the merits." This course of action is effectively what the Court undertook today, adapted of course to the circumstances of the present case.

In light of these premises, we hereby **REVERSE** and **SET ASIDE** the July 5, 2006 decision and the March 12, 2008 resolution of the Court of Appeals in CA-G.R. SP No. 92828. SP. Proc. No. M.-5954 is hereby ordered reinstated. Let the records of this case be remanded to the court of origin for further proceedings. No costs.

SO ORDERED.

Carpio (Chairperson), del Castillo, Perez, and *Perlas-Bernabe, JJ.*, concur.

FIRST DIVISION

[G.R. No. 189563. April 7, 2014]

GILAT SATELLITE NETWORKS, LTD., *petitioner, vs.* **UNITED COCONUT PLANTERS BANK GENERAL INSURANCE CO., INC.,** *respondent.*

SYLLABUS

1. COMMERCIAL LAW; INSURANCE; SURETYSHIP; THE SURETY'S LIABILITY IS JOINT AND SOLIDARY WITH THAT OF THE PRINCIPAL DEBTOR; ELUCIDATED.— In suretyship, the oft-repeated rule is that a surety's liability is joint and solidary with that of the principal debtor. This undertaking makes a surety agreement an ancillary contract, as it presupposes the existence of a principal contract. Nevertheless, although the contract of a surety is in essence secondary only to a valid principal obligation, its liability to the creditor or "promise" of the principal is said to be direct, primary and absolute; in other words, a surety is directly and equally bound with the principal. He becomes liable for the debt and duty of the principal obligor, even without possessing a direct or personal interest in the obligations constituted by the latter. Thus, a surety is not entitled to a separate notice of default or to the benefit of excussion. It may in fact be sued separately or together with the principal debtor.

2. ID.; ID.; ID.; ID.; ACCEPTANCE OF SURETY AGREEMENT DOES NOT GIVE THE SURETY THE RIGHT TO INTERVENE IN THE PRINCIPAL CONTRACT; SURETY CANNOT INVOKE ARBITRATION CLAUSE IN THE PRINCIPAL CONTRACT.— [W]e have held in *Stronghold Insurance Co. Inc. v. Tokyu Construction Co. Ltd.*, that "[the] acceptance [of a surety agreement], however, does not change in any material way the creditor's relationship with the principal debtor nor does it make the surety an active party to the principal creditor-debtor relationship. **In other words, the acceptance does not give the surety the right to intervene in the principal contract.** The surety's role arises only upon the debtor's default, at which time, it can be directly held liable by the creditor for payment as a solidary obligor." Hence, the surety remains a

stranger to the Purchase Agreement. We agree with petitioner that respondent cannot invoke in its favor the arbitration clause in the Purchase Agreement, because it is not a party to that contract. An arbitration agreement being contractual in nature, it is binding only on the parties thereto, as well as their assigns and heirs. Section 24 of Republic Act No. 9285 is clear in stating that a referral to arbitration may only take place "if at least one party so requests not later than the pre-trial conference, or upon the request of both parties thereafter." Respondent has not presented even an iota of evidence to show that either petitioner or One Virtual submitted its contesting claim for arbitration. Sureties do not insure the solvency of the debtor, but rather the debt itself. They are contracted precisely to mitigate risks of non-performance on the part of the obligor. **This responsibility necessarily places a surety on the same level as that of the principal debtor.** The effect is that the creditor is given the right to directly proceed against either principal debtor or surety. This is the reason why excussion cannot be invoked. To require the creditor to proceed to arbitration would render the very essence of suretyship nugatory and diminish its value in commerce. At any rate, as we have held in *Palmares v. Court of Appeals*, "if the surety is dissatisfied with the degree of activity displayed by the creditor in the pursuit of his principal, he may pay the debt himself and become subrogated to all the rights and remedies of the creditor."

3. CIVIL LAW; DAMAGES; IN CASE OF DELAY IN THE OBLIGATION TO PAY SUM OF MONEY, INDEMNITY FOR DAMAGES SHALL BE PAYMENT OF INTEREST; MEANING OF "DELAY," ELUCIDATED.— Article 2209 of the Civil Code is clear: "[i]f an obligation consists in the payment of a sum of money, and the debtor incurs a delay, the indemnity for damages, there being no stipulation to the contrary, shall be the payment of the interest agreed upon, and in the absence of stipulation, the legal interest." Delay arises from the time the obligee judicially or extrajudicially demands from the obligor the performance of the obligation, and the latter fails to comply. Delay, as used in Article 1169, is synonymous with default or *mora*, which means delay in the fulfilment of obligations. It is the nonfulfillment of an obligation with respect to time. In order for the debtor (in this case, the surety) to be in default, it is necessary that the following requisites be present: (1) that the obligation be demandable and already liquidated;

(2) that the debtor delays performance; and (3) that the creditor requires the performance judicially or extrajudicially. Having held that a surety upon demand fails to pay, it can be held liable for interest, even if in thus paying, its liability becomes more than the principal obligation. The increased liability is not because of the contract, but because of the default and the necessity of judicial collection. However, for delay to merit interest, it must be inexcusable in nature.

4. ID.; ID.; ID.; INTEREST ACCRUES FROM THE TIME JUDICIAL OR EXTRAJUDICIAL DEMAND IS MADE.— As to the issue of when interest must accrue, our Civil Code is explicit in stating that it accrues from the time judicial or extrajudicial demand is made on the surety. This ruling is in accordance with the provisions of Article 1169 of the Civil Code and of the settled rule that where there has been an extrajudicial demand before an action for performance was filed, interest on the amount due begins to run, not from the date of the filing of the complaint, but from the date of that extrajudicial demand.

5. ID.; ID.; ID.; INTEREST RATE TO BE IMPOSED.— With regard to the interest rate to be imposed, we take cue from *Nacar v. Gallery Frames*, which modified the guidelines established in *Eastern Shipping Lines v. CA* in relation to Bangko Sentral-Monetary Board Circular No. 799 (Series of 2013), to wit: 1. When the obligation is breached, and it consists in the payment of a sum of money, *i.e.*, a loan or forbearance of money, the interest due should be that which may have been stipulated in writing. Furthermore, the interest due shall itself earn legal interest from the time it is judicially demanded. In the absence of stipulation, the rate of interest shall be 6% per annum to be computed from default, *i.e.*, from judicial or extrajudicial demand under and subject to the provisions of Article 1169 of the Civil Code. x x x 3. When the judgment of the court awarding a sum of money becomes final and executory, the rate of legal interest, whether the case falls under paragraph 1 or paragraph 2, above, shall be 6% per annum from such finality until its satisfaction, this interim period being deemed to be by then an equivalent to a forbearance of credit.

APPEARANCES OF COUNSEL

Sycip Salazar Hernandez & Gatmaitan for petitioner.
MCR Law Offices for respondent.

D E C I S I O N

SERENO, *C.J.*:

This is an appeal via a Petition for Review on *Certiorari*[1] filed 6 November 2009 assailing the Decision[2] and Resolution[3] of the Court of Appeals (CA) in CA-G.R. CV No. 89263, which reversed the Decision[4] of the Regional Trial Court (RTC), Branch 141, Makati City in Civil Case No. 02-461, ordering respondent to pay petitioner a sum of money.

The antecedent facts, as culled from the CA, are as follows:

On September 15, 1999, One Virtual placed with GILAT a purchase order for various telecommunications equipment (sic), accessories, spares, services and software, at a total purchase price of Two Million One Hundred Twenty-Eight Thousand Two Hundred Fifty Dollars (US$2,128,250.00). Of the said purchase price for the goods delivered, One Virtual promised to pay a portion thereof totalling US$1.2 Million in accordance with the payment schedule dated 22 November 1999. To ensure the prompt payment of this amount, it obtained defendant UCPB General Insurance Co., Inc.'s surety bond dated 3 December 1999, in favor of GILAT.

During the period between [sic] September 1999 and June 2000, GILAT shipped and delivered to One Virtual the purchased products and equipment, as evidenced by airway bills/Bill of Lading ***(Exhibits***

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[1] *Rollo,* pp. 45-77.

[2] *Id.* at 12-21; CA Decision dated 6 October 2008, penned by Associate Justice Magdangal M. De Leon and concurred in by Associate Justices Josefina Guevara-Salonga and Ramon R. Garcia.

[3] *Id.* at 23-24; CA Resolution dated 16 September 2009.

[4] *Id.* at 151-156; RTC Decision dated 28 December 2006 penned by Pairing Judge Dina Pestaño Teves.

"F", "F-1" to "F-8"). All of the equipment (including the software components for which payment was secured by the surety bond, was shipped by GILAT and duly received by One Virtual. Under an endorsement dated December 23, 1999 ***(Exhibit "E")***, the surety issued, with One Virtual's conformity, an amendment to the surety bond, Annex "A" thereof, correcting its expiry date from May 30, 2001 to July 30, 2001.

One Virtual failed to pay GILAT the amount of Four Hundred Thousand Dollars (US$400,000.00) on the due date of May 30, 2000 in accordance with the payment schedule attached as Annex "A" to the surety bond, prompting GILAT to write the surety defendant UCPB on June 5, 2000, a demand letter ***(Exhibit "G")*** for payment of the said amount of US$400,000.00. No part of the amount set forth in this demand has been paid to date by either One Virtual or defendant UCPB. One Virtual likewise failed to pay on the succeeding payment instalment date of 30 November 2000 as set out in Annex "A" of the surety bond, prompting GILAT to send a second demand letter dated January 24, 2001, for the payment of the full amount of US$1,200,000.00 guaranteed under the surety bond, plus interests and expenses ***(Exhibit "H")*** and which letter was received by the defendant surety on January 25, 2001. However, defendant UCPB failed to settle the amount of US$1,200,000.00 or a part thereof, hence, the instant complaint."[5] (Emphases in the original)

On 24 April 2002, petitioner Gilat Satellite Networks, Ltd., filed a Complaint[6] against respondent UCPB General Insurance Co., Inc., to recover the amounts supposedly covered by the surety bond, plus interests and expenses. After due hearing, the RTC rendered its Decision,[7] the dispositive portion of which is herein quoted:

WHEREFORE, premises considered, the Court hereby renders judgment for the plaintiff, and against the defendant, ordering, to wit:

1. The defendant surety to pay the plaintiff the amount of One Million Two Hundred Thousand Dollars (US$1,200,000.00)

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[5] *Id*. at 14-15.

[6] *Id*. at 100-104.

[7] *Supra* note 4.

representing the principal debt under the Surety Bond, with legal interest thereon at the rate of 12% per annum computed from the time the judgment becomes final and executory until the obligation is fully settled; and

2. The defendant surety to pay the plaintiff the amount of Forty-Four Thousand Four Dollars and Four Cents (US$44,004.04) representing attorney's fees and litigation expenses.

Accordingly, defendant's counterclaim is hereby **dismissed** for want of merit.

SO ORDERED. (Emphasis in the original)

In so ruling, the RTC reasoned that there is "no dispute that plaintiff [petitioner] delivered all the subject equipments [sic] and the same was installed. Even with the delivery and installation made, One Virtual failed to pay any of the payments agreed upon. Demand notwithstanding, defendant failed and refused and continued to fail and refused to settle the obligation."[8] Considering that its liability was indeed that of a surety, as "spelled out in the Surety Bond executed by and between One Virtual as Principal, UCPB as Surety and GILAT as Creditor/Bond Obligee,"[9] respondent agreed and bound itself to pay in accordance with the Payment Milestones. This obligation was not made dependent on any condition outside the terms and conditions of the Surety Bond and Payment Milestones.[10]

Insofar as the interests were concerned, the RTC denied petitioner's claim on the premise that while a surety can be held liable for interest even if it becomes more onerous than the principal obligation, the surety shall only accrue when the delay or refusal to pay the principal obligation is without any justifiable cause.[11] Here, respondent failed to pay its surety obligation because of the advice of its principal (One Virtual)

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[8] *Id*. at 155.

[9] *Id*. at 154.

[10] *Id*. at 155.

[11] *Id*. at 156.

not to pay.[12] The RTC then obligated respondent to pay petitioner the amount of USD1,200,000.00 representing the principal debt under the Surety Bond, with legal interest at the rate of 12% per annum computed from the time the judgment becomes final and executory, and USD44,004.04 representing attorney's fees and litigation expenses.

On 18 October 2007, respondent appealed to the CA.[13] The appellate court rendered a Decision[14] in the following manner:

> **WHEREFORE,** this appealed case is **DISMISSED** for lack of jurisdiction. The trial court's *Decision* dated December 28, 2006 is **VACATED.** Plaintiff-appellant Gilat Satellite Networks Ltd., and One Virtual are ordered to proceed to arbitration, the outcome of which shall necessary bind the parties, including the surety, defendant-appellant United Coconut Planters Bank General Insurance Co., Inc.
>
> **SO ORDERED.** (Emphasis in the original)

The CA ruled that in "enforcing a surety contract, the 'complementary-contracts-construed-together' doctrine finds application." According to this doctrine, the accessory contract must be construed with the principal agreement.[15] In this case, the appellate court considered the Purchase Agreement entered into between petitioner and One Virtual as the principal contract,[16] whose stipulations are also binding on the parties to the suretyship.[17] Bearing in mind the arbitration clause contained in the Purchase Agreement[18] and pursuant to the policy

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[12] *Id*.

[13] *Id.* at 176-191.

[14] *Supra* note 2.

[15] *Rollo,* p. 90.

[16] *Id*.

[17] *Id.* at 91.

[18] *Id.* at 92. The arbitration clauses reads:

"20.1. In the event of a dispute between Buyer and Seller arising out of, or relating to this Agreement, its interpretation or performance hereunder,

of the courts to encourage alternative dispute resolution methods,[19] the trial court's Decision was vacated; petitioner and One Virtual were ordered to proceed to arbitration.

On 9 September 2008, petitioner filed a Motion for Reconsideration with Motion for Oral Argument. The motion was denied for lack of merit in a Resolution[20] issued by the CA on 16 September 2009.

Hence, the instant Petition.

On 31 August 2010, respondent filed a Comment[21] on the Petition for Review. On 24 November 2010, petitioner filed a Reply.[22]

ISSUES

From the foregoing, we reduce the issues to the following:

1. Whether or not the CA erred in dismissing the case and ordering petitioner and One Virtual to arbitrate; and
2. Whether or not petitioner is entitled to legal interest due to the delay in the fulfilment by respondent of its obligation under the Suretyship Agreement.

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the parties shall exert their best efforts to resolve the dispute amicably through negotiations.

20.2. In the event that a dispute cannot be resolved amicably by the parties through negotiations within sixty (60) days of the commencement of such negotiations, the dispute shall be submitted to arbitration in accordance with the laws of the United States, with such arbitration to be held in New York, United States. Each party shall select one arbitrator and then those two arbitrators shall in good faith select a third arbitrator. The arbitration shall be conducted in English. Any decision resulting from such arbitration shall be final and binding upon the parties to this Agreement and on any other person participating in the arbitration. Judgment upon the award may be entered in any court having jurisdiction thereof."

[19] *Id.* at 92.

[20] *Supra* note 3.

[21] *Rollo,* pp. 400-421.

[22] *Id.* at 433-448.

THE COURT'S RULING

The existence of a suretyship agreement does not give the surety the right to intervene in the principal contract, nor can an arbitration clause between the buyer and the seller be invoked by a non-party such as the surety.

Petitioner alleges that arbitration laws mandate that no court can compel arbitration, unless a party entitled to it applies for this relief.[23] This referral, however, can only be demanded by one who is a party to the arbitration agreement.[24] Considering that neither petitioner nor One Virtual has asked for a referral, there is no basis for the CA's order to arbitrate.

Moreover, Articles 1216 and 2047 of the Civil Code[25] clearly provide that the creditor may proceed against the surety without having first sued the principal debtor.[26] Even the Surety Agreement itself states that respondent becomes liable upon "mere failure of the Principal to make such prompt payment."[27] Thus, petitioner should not be ordered to make a separate claim against One Virtual (via arbitration) before proceeding against respondent.[28]

On the other hand, respondent maintains that a surety contract is merely an accessory contract, which cannot exist without a

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[23] *Id*. at 60-62.

[24] *Id*.

[25] CIVIL CODE, Art. 1216. The creditor may proceed against any one of the solidary debtors or some or all of them simultaneously. The demand made against one of them shall not be an obstacle to those which may subsequently be directed against the others, so long as the debt has not been fully collected.

CIVIL CODE, Art. 2047. x x x If a person binds himself solidarily with the principal debtor, the provisions of Section 4, Chapter 3, Title I of this Book shall be observed. In such case the contract is called a suretyship.

[26] *Rollo,* p. 54.

[27] *Id*. at 57.

[28] *Id*. at 59.

valid obligation.[29] Thus, the surety may avail itself of all the defenses available to the principal debtor and inherent in the debt[30] – that is, the right to invoke the arbitration clause in the Purchase Agreement.

We agree with petitioner.

In suretyship, the oft-repeated rule is that a surety's liability is joint and solidary with that of the principal debtor. This undertaking makes a surety agreement an ancillary contract, as it presupposes the existence of a principal contract.[31] Nevertheless, although the contract of a surety is in essence secondary only to a valid principal obligation, its liability to the creditor or "promise" of the principal is said to be direct, primary and absolute; in other words, a surety is directly and equally bound with the principal.[32] He becomes liable for the debt and duty of the principal obligor, even without possessing a direct or personal interest in the obligations constituted by the latter.[33] Thus, a surety is not entitled to a separate notice of default or to the benefit of excussion.[34] It may in fact be sued separately or together with the principal debtor.[35]

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[29] *Id*. at 412.

[30] *Id*. at 413.

[31] *Asset Builders Corporation v. Stronghold Insurance Co., Inc.,* G.R. No. 187116, 18 October 2010, 633 SCRA 370, citing *Security Pacific Assurance Corporation v. Hon. Tria-Infante,* 505 Phil. 609, 620 (2005).

[32] *Id*., citing *Stronghold Insurance Company, Inc. v. Republic-Asahi Glass Corporation,* 525 Phil. 270 (2006).

[33] *Totanes v. China Banking Corporation,* G.R. No. 179880, 19 January 2009, 576 SCRA 323, citing *Tiu Hiong Guan v. Metropolitan Bank and Trust Company,* 530 Phil. 12 (2006).

[34] *Intra-Strata Assurance Corporation & Philippine Home Assurance Corp. v. Republic of the Philippines,* 579 Phil. 631 (2008), citing 74 Am. Jur. §35, and *Manila Surety & Fidelity Co, Inc. v. Batu Construction & Co.,* 101 Phil. 494 (1957).

[35] *Id*., citing *NASSCO v. Torrento,* 126 Phil. 777 (1967); CIVIL CODE, Article 1216.

After a thorough examination of the pieces of evidence presented by both parties,[36] the RTC found that petitioner had delivered all the goods to One Virtual and installed them. Despite these compliances, One Virtual still failed to pay its obligation,[37] triggering respondent's liability to petitioner as the former's surety. In other words, the failure of One Virtual, as the principal debtor, to fulfill its monetary obligation to petitioner gave the latter an immediate right to pursue respondent as the surety.

Consequently, we cannot sustain respondent's claim that the Purchase Agreement, being the principal contract to which the Suretyship Agreement is accessory, must take precedence over arbitration as the preferred mode of settling disputes.

First, we have held in *Stronghold Insurance Co. Inc. v. Tokyu Construction Co. Ltd.*,[38] that "[the] acceptance [of a surety agreement], however, does not change in any material way the creditor's relationship with the principal debtor nor does it make the surety an active party to the principal creditor-debtor relationship. **In other words, the acceptance does not give the surety the right to intervene in the principal contract.** The surety's role arises only upon the debtor's default, at which time, it can be directly held liable by the creditor for payment as a solidary obligor." Hence, the surety remains a stranger to the Purchase Agreement. We agree with petitioner that respondent cannot invoke in its favor the arbitration clause in the Purchase Agreement, because it is not a party to that contract.[39] An arbitration agreement being contractual in nature,[40] it is binding only on the parties thereto, as well as their assigns and heirs.[41]

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[36] *Rollo,* pp. 153-155.

[37] *Id*. at 155.

[38] G.R. Nos. 158820-21, 5 June 2009, 588 SCRA 410, 422.

[39] *Rollo,* p. 59.

[40] *Gonzales v. Climax Mining Ltd.,* 541 Phil. 143 (2007). See also *Manila Electric Company v. Pasay Transportation Co.,* 57 Phil. 600, 603 (1932).

[41] *Heirs of Augusto L. Salas, Jr. v. Laperal Realty Corp.,* 378 Phil. 369 (1999), citing Civil Code, Art. 1311.

Second, Section 24 of Republic Act No. 9285[42] is clear in stating that a referral to arbitration may only take place "if at least one party so requests not later than the pre-trial conference, or upon the request of both parties thereafter." Respondent has not presented even an iota of evidence to show that either petitioner or One Virtual submitted its contesting claim for arbitration.

Third, sureties do not insure the solvency of the debtor, but rather the debt itself.[43] They are contracted precisely to mitigate risks of non-performance on the part of the obligor. **This responsibility necessarily places a surety on the same level as that of the principal debtor.**[44] The effect is that the creditor is given the right to directly proceed against either principal debtor or surety. This is the reason why excussion cannot be invoked.[45] To require the creditor to proceed to arbitration would render the very essence of suretyship nugatory and diminish its value in commerce. At any rate, as we have held in *Palmares v. Court of Appeals*,[46] "if the surety is dissatisfied with the degree of activity displayed by the creditor in the pursuit of his principal, he may pay the debt himself and become subrogated to all the rights and remedies of the creditor."

Interest, as a form of indemnity, may be awarded to a creditor for the delay incurred by a debtor in the payment of the latter's obligation, provided that the delay is inexcusable.

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[42] "An Act to Institutionalize the Use of an Alternative Dispute Resolution System in the Philippines and to Establish the Office for Alternative Dispute Resolution, and for Other Purposes" or the "Alternative Dispute Resolution Act of 2004."

[43] *Totanes v. China Banking Corporation*, *supra* note 33.

[44] See *International Finance Corporation v. Imperial Textile Mills, Inc.*, 511 Phil. 591 (2005).

[45] *Intra-Strata Assurance Corp. v. Republic*, 579 Phil. 631 (2008), citing *Manila Surety & Fidelity Co, Inc. v. Batu Construction & Co.*, 101 Phil. 494 (1957).

[46] 351 Phil. 664, 686 (1998), citing 74 Am. Jur. 2d, Principal and Surety, §68, 53.

Anent the issue of interests, petitioner alleges that it deserves to be paid legal interest of 12% per annum from the time of its first demand on respondent on 5 June 2000 or at most, from the second demand on 24 January 2001 because of the latter's delay in discharging its monetary obligation.[47] Citing Article 1169 of the Civil Code, petitioner insists that the delay started to run from the time it demanded the fulfilment of respondent's obligation under the suretyship contract. Significantly, respondent does not contest this point, but instead argues that it is only liable for legal interest of 6% per annum from the date of petitioner's last demand on 24 January 2001.

In rejecting petitioner's position, the RTC stated that interests may only accrue when the delay or the refusal of a party to pay is without any justifiable cause.[48] In this case, respondent's failure to heed the demand was due to the advice of One Virtual that petitioner allegedly breached its undertakings as stated in the Purchase Agreement.[49] The CA, however, made no pronouncement on this matter.

We sustain petitioner.

Article 2209 of the Civil Code is clear: "[i]f an obligation consists in the payment of a sum of money, and the debtor incurs a delay, the indemnity for damages, there being no stipulation to the contrary, shall be the payment of the interest agreed upon, and in the absence of stipulation, the legal interest."

Delay arises from the time the obligee judicially or extrajudicially demands from the obligor the performance of the obligation, and the latter fails to comply.[50] Delay, as used in Article 1169, is synonymous with default or *mora*, which means delay in the fulfilment of obligations.[51] It is the nonfulfillment of an obligation

[47] *Rollo,* pp. 69-75.

[48] *Id*. at 156.

[49] *Id*.

[50] *Social Security System v. Moonwalk Development & Housing Corp.,* G.R. No. 73345, 7 April 1993, 221 SCRA 119.

[51] *Santos Ventura Hocorma Foundation, Inc. v. Santos,* 484 Phil. 447 (2004), citing IV Arturo M. Tolentino, *Civil Code of the Philippines*, 101 (1987 ed.).

with respect to time.[52] In order for the debtor (in this case, the surety) to be in default, it is necessary that the following requisites be present: (1) that the obligation be demandable and already liquidated; (2) that the debtor delays performance; and (3) that the creditor requires the performance judicially or extrajudicially.[53]

Having held that a surety upon demand fails to pay, it can be held liable for interest, even if in thus paying, its liability becomes more than the principal obligation.[54] The increased liability is not because of the contract, but because of the default and the necessity of judicial collection.[55]

However, for delay to merit interest, it must be inexcusable in nature. In *Guanio v. Makati-Shangri-la Hotel*,[56] citing *RCPI v. Verchez*,[57] we held thus:

> In *culpa contractual* x x x the mere proof of the existence of the contract and the failure of its compliance justify, *prima facie*, a corresponding right of relief. The law, recognizing the obligatory force of contracts, will not permit a party to be set free from liability for any kind of misperformance of the contractual undertaking or a contravention of the tenor thereof. A breach upon the contract confers upon the injured party a valid cause for recovering that which may have been lost or suffered. The remedy serves to preserve the interests of the promissee that may include his "expectation interest," which is his interest in having the benefit of his bargain by being put in as good a position as he would have been in had the contract been performed, or his "reliance interest," which is his interest in being reimbursed for loss caused by reliance on the contract by being put in as good a position as he would have been in had the

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[52] *Id*.

[53] *Id*. citing *Tolentino* at 102.

[54] *Commonwealth Insurance Corporation v. Court of Appeals*, 466 Phil. 104 (2004), citing *Republic vs. Court of Appeals and R & B Surety and Insurance Company, Inc.*, 406 Phil. 745 (2001).

[55] *Id*.

[56] G.R. No. 190601, 7 February 2011, 641 SCRA 591, 596-597.

[57] 516 Phil. 725, citing *FGU Insurance Corp. v. G.P. Sarmiento Trucking Corp.*, 435 Phil. 333, 341-342 (2002).

contract not been made; or his "restitution interest," which is his interest in having restored to him any benefit that he has conferred on the other party. Indeed, agreements can accomplish little, either for their makers or for society, unless they are made the basis for action. **The effect of every infraction is to create a new duty, that is, to make RECOMPENSE to the one who has been injured by the failure of another to observe his contractual obligation unless he can show extenuating circumstances, like proof of his exercise of due diligence x x x or of the attendance of fortuitous event, to excuse him from his ensuing liability.** (Emphasis ours)

We agree with petitioner that records are bereft of proof to show that respondent's delay was indeed justified by the circumstances — that is, One Virtual's advice regarding petitioner's alleged breach of obligations. The lower court's Decision itself belied this contention when it said that "plaintiff is not disputing that it did not complete commissioning work on one of the two systems because One Virtual at that time is already in default and has not paid GILAT."[58] Assuming *arguendo* that the commissioning work was not completed, respondent has no one to blame but its principal, One Virtual; if only it had paid its obligation on time, petitioner would not have been forced to stop operations. Moreover, the deposition of Mr. Erez Antebi, vice president of Gilat, repeatedly stated that petitioner had delivered all equipment, including the licensed software; and that the equipment had been installed and in fact, gone into operation.[59] Notwithstanding these compliances, respondent still failed to pay.

As to the issue of when interest must accrue, our Civil Code is explicit in stating that it accrues from the time judicial or extrajudicial demand is made on the surety. This ruling is in accordance with the provisions of Article 1169 of the Civil Code and of the settled rule that where there has been an extra-judicial demand before an action for performance was filed, interest on the amount due begins to run, not from the date of the filing of the complaint, but from the date of that extra-judicial

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[58] *Rollo,* p. 156.

[59] *Id.* at 461-481.

demand.[60] Considering that respondent failed to pay its obligation on 30 May 2000 in accordance with the Purchase Agreement, and that the extrajudicial demand of petitioner was sent on 5 June 2000,[61] we agree with the latter that interest must start to run from the time petitioner sent its first demand letter (5 June 2000), because the obligation was already due and demandable at that time.

With regard to the interest rate to be imposed, we take cue from *Nacar v. Gallery Frames*,[62] which modified the guidelines established in *Eastern Shipping Lines v. CA*[63] in relation to Bangko Sentral-Monetary Board Circular No. 799 (Series of 2013), to wit:

> 1. When the obligation is breached, and it consists in the payment of a sum of money, *i.e.*, a loan or forbearance of money, the interest due should be that which may have been stipulated in writing. Furthermore, the interest due shall itself earn legal interest from the time it is judicially demanded. In the absence of stipulation, the rate of interest shall be 6% per annum to be computed from default, *i.e.*, from judicial or extrajudicial demand under and subject to the provisions of Article 1169 of the Civil Code.
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> x x x x x x x x x
>
> 4. When the judgment of the court awarding a sum of money becomes final and executory, the rate of legal interest, whether the case falls under paragraph 1 or paragraph 2, above, shall be 6% per annum from such finality until its satisfaction, this interim period being deemed to be by then an equivalent to a forbearance of credit.

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[60] *Commonwealth Insurance Corporation v. Court of Appeals*, *supra* note 54, citing Tolentino, *Commentaries and Jurisprudence on the Civil Code of the Philippines*, 1991 Reprint, Vol. IV, p. 103; Padilla, *Civil Code Annotated*, 1987 Edition, Vol. IV, p. 61.

[61] *Rollo*, pp. 48, 495.

[62] G.R. No. 189871, 13 August 2013.

[63] G.R. No. 97412, 12 July 1994, 234 SCRA 78, 95-97.

Applying the above-discussed concepts and in the absence of an agreement as to interests, we are hereby compelled to award petitioner legal interest at the rate of 6% per annum from 5 June 2000, its first date of extrajudicial demand, until the satisfaction of the debt in accordance with the revised guidelines enunciated in *Nacar.*

WHEREFORE, the Petition for Review on *Certiorari* is hereby **GRANTED.** The assailed Decision and Resolution of the Court of Appeals in CA-G.R. CV No. 89263 are **REVERSED.** The Decision of the Regional Trial Court, Branch 141, Makati City is **REINSTATED**, with **MODIFICATION** insofar as the award of legal interest is concerned. Respondent is hereby ordered to pay legal interest at the rate of 6% per annum from 5 June 2000 until the satisfaction of its obligation under the Suretyship Contract and Purchase Agreement.

SO ORDERED.

Leonardo-de Castro, Bersamin, Villarama, Jr., and *Reyes, JJ.,* concur.

FIRST DIVISION

[G.R. No. 191154. April 7, 2014]

SPI TECHNOLOGIES, INC. and LEA VILLANUEVA, *petitioners, vs.* **VICTORIA K. MAPUA,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; REDUNDANCY PROGRAM; REQUISITES.— Article 283 of the Labor Code provides for the closure of establishment and reduction of personnel. x x x Expounding on the requirements of written

notice and separation pay, this Court in *Asian Alcohol Corporation v. NLRC* pronounced that for a valid implementation of a redundancy program, the employer must comply with the following requisites: (1) written notice served on both the employee and the DOLE at least one month prior to the intended date of termination; (2) payment of separation pay equivalent to at least one month pay or at least one month pay for every year of service, whichever is higher; (3) good faith in abolishing the redundant position; and (4) fair and reasonable criteria in ascertaining what positions are to be declared redundant.

2. ID.; ID.; ID.; ID.; SEPARATION PAY; OFFER MUST BE ACCOMPANIED WITH GOOD FAITH IN THE ABOLISHMENT OF THE REDUNDANT POSITION AND FAIR AND REASONABLE CRITERIA IN ASCERTAINING THE REDUNDANT POSITION.— On the matter of separation pay, the offer must be accompanied with good faith in the abolishment of the redundant position and fair and reasonable criteria in ascertaining the redundant position. It is insignificant that the amount offered to Mapua is higher than what the law requires because the Court has previously noted that "a job is more than the salary that it carries. There is a psychological effect or a stigma in immediately finding one's self laid off from work."

3. ID.; ID.; ID.; ID.; MUST BE ADEQUATELY SUPPORTED.— In *AMA Computer College, Inc. v. Garcia, et al.*, the Court held that the presentation of the new table of the organization and the certification of the Human Resources Supervisor that the positions occupied by the retrenched employees are redundant are inadequate as evidence to support the college's redundancy program. x x x That "[o]f primordial consideration is not the nomenclature or title given to the employee, but the nature of his functions." "It is not the job title but the actual work that the employee performs." Also, change in the job title is not synonymous to a change in the functions. A position cannot be abolished by a mere change of job title. In cases of redundancy, the management should adduce evidence and prove that a position which was created in place of a previous one should pertain to functions which are dissimilar and incongruous to the abolished office. Thus, in *Caltex (Phils.), Inc. (now Chevron Phils., Inc.) v. NLRC*, the Court dismissed the employer's claim of redundancy because it was shown that

after declaring the employee's position of Senior Accounting Analyst as redundant, the company opened other accounting positions (Terminal Accountant and Internal Auditor) for hiring. There was no showing that the private respondent therein could not perform the functions demanded of the vacant positions, to which he could be transferred to instead of being dismissed.

4. ID.; ID.; ID.; ILLEGAL DISMISSAL; WHEN PERSONAL LIABILITY OF CORPORATE OFFICERS ATTACHES.— On the issue of the solidary obligation of the corporate officers impleaded *vis-à-vis* the corporation for Mapua's illegal dismissal, "[i]t is hornbook principle that personal liability of corporate directors, trustees or officers attaches only when: (a) they assent to a patently unlawful act of the corporation, or when they are guilty of bad faith or gross negligence in directing its affairs, or when there is a conflict of interest resulting in damages to the corporation, its stockholders or other persons; (b) they consent to the issuance of watered down stocks or when, having knowledge of such issuance, do not forthwith file with the corporate secretary their written objection; (c) they agree to hold themselves personally and solidarily liable with the corporation; or (d) they are made by specific provision of law personally answerable for their corporate action."

5. ID.; ID.; ID.; ID.; DAMAGES; AWARDING THE VEHICLE UNDER THE COMPANY CAR PLAN TO THE RESPONDENT MAPUA IS NOT WITHIN THE JURISDICTION OF THE LABOR ARBITER.— With respect to the vehicle under the company car plan which the LA awarded to Mapua, the Court rules that the subject matter is not within the jurisdiction of the LA but with the regular courts, the remedy being civil in nature arising from a contractual obligation, following this Court's ruling in several cases.

6. ID.; ID.; ID.; ID.; ID.; MORAL DAMAGES, EXEMPLARY DAMAGES AND ATTORNEY'S FEES AWARDED IN CASE AT BAR.— Award of moral and exemplary damages for an illegally dismissed employee is proper where the employee had been harassed and arbitrarily terminated by the employer. Moral damages may be awarded to compensate one for diverse injuries such as mental anguish, besmirched reputation, wounded

feelings, and social humiliation occasioned by the employer's unreasonable dismissal of the employee. The Court has consistently accorded the working class a right to recover damages for unjust dismissals tainted with bad faith; where the motive of the employer in dismissing the employee is far from noble. The award of such damages is based not on the Labor Code but on Article 220 of the Civil Code. However, the Court observes that the CA decision affirming the LA's award of ₱500,000.00 and ₱250,000.00 as moral and exemplary damages, respectively, is evidently excessive because the purpose for awarding damages is not to enrich the illegally dismissed employee. Consequently, the Court hereby reduces the amount of ₱50,000.00 each as moral and exemplary damages. Mapua is also entitled to attorney's fees but the Court is modifying the amount of ₱196,848.42 awarded by the LA and fix such attorney's fees in the amount of ten percent (10%) of the total monetary award, pursuant to Article 111 of the Labor Code.

APPEARANCES OF COUNSEL

Gemma Lou P. Ramos for petitioners.
Smith & Smith Law Office for respondent.

D E C I S I O N

REYES, *J.*:

The Court remains steadfast on its stand that the determination of the continuing necessity of a particular officer or position in a business corporation is a management prerogative, and the courts will not interfere unless arbitrary or malicious action on the part of management is shown. Indeed, an employer has no legal obligation to keep more employees than are necessary for the operation of its business.[1] In the instant case however, we find our intrusion indispensable, to look into matters which we would otherwise consider as an exercise of management prerogative. "Management prerogative" are not magic words

[1] *Lowe, Inc. v. Court of Appeals*, G.R. Nos. 164813 and 174590, August 14, 2009, 596 SCRA 140, 153.

uttered by an employer to bring him to a realm where our labor laws cannot reach.

This is a petition for review on *certiorari*[2] under Rule 45 of the Rules of Court of the Decision[3] dated October 28, 2009 and Resolution[4] dated January 18, 2010 of the Court of Appeals (CA) in CA-G.R. SP. No. 107879.

The Facts

Victoria K. Mapua (Mapua) alleged that she was hired in 2003 by SPI Technologies, Inc. (SPI) and was the Corporate Development's Research/Business Intelligence Unit Head and Manager of the company. Subsequently in August 2006, the then Vice President and Corporate Development Head, Peter Maquera (Maquera) hired Elizabeth Nolan (Nolan) as Mapua's supervisor.[5]

Sometime in October 2006, the hard disk on Mapua's laptop crashed, causing her to lose files and data. Mapua informed Nolan and her colleagues that she was working on recovering the lost data and asked for their patience for any possible delay on her part in meeting deadlines.[6]

On November 13, 2006, Mapua retrieved the lost data with the assistance of National Bureau of Investigation Anti-Fraud and Computer Crimes Division. Yet, Nolan informed Mapua that she was realigning Mapua's position to become a subordinate of co-manager Sameer Raina (Raina) due to her missing a work deadline. Nolan also disclosed that Mapua's colleagues were "demotivated" [sic] because she was "taking things easy while they were working very hard," and that she was "frequently

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[2] *Rollo,* pp. 5-52.

[3] Penned by Associate Justice Remedios A. Salazar-Fernando, with Associate Justices Isaias P. Dicdican and Romeo F. Barza, concurring; *id.* at 761-784.

[4] *Id*. at 830-831.

[5] *Id*. at 103, 105.

[6] *Id*. at 105.

absent, under timing, and coming in late every time [Maquera] goes on leave or on vacation."[7]

On November 16, 2006, Mapua obtained a summary of her attendance for the last six months to prove that she did not have frequent absences or under time when Maquera would be on leave or vacation. When shown to Nolan, she was merely told not to give the matter any more importance and to just move on.[8]

In December 2006, Mapua noticed that her colleagues began to ostracize and avoid her. Nolan and Raina started giving out majority of her research work and other duties under Healthcare and Legal Division to the rank-and-file staff. Mapua lost about 95% of her work projects and job responsibilities.[9]

Mapua consulted these work problems with SPI's Human Resource Director, Lea Villanueva (Villanueva), and asked if she can be transferred to another department within SPI. Subsequently, Villanueva informed Mapua that there is an intra-office opening and that she would schedule an exploratory interview for her. However, due to postponements not made by Mapua, the interview did not materialize.

On February 28, 2007, Mapua allegedly saw the new table of organization of the Corporate Development Division which would be renamed as the Marketing Division. The new structure showed that Mapua's level will be again downgraded because a new manager will be hired and positioned between her rank and Raina's.[10]

On March 21, 2007, Raina informed Mapua over the phone that her position was considered redundant and that she is terminated from employment effective immediately. Villanueva notified Mapua that she should cease reporting for work the

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[7] *Id*. at 105-106.

[8] *Id*. at 107.

[9] *Id*. at 108.

[10] *Id*. at 109.

next day. Her laptop computer and company mobile phone were taken right away and her office phone ceased to function.[11]

Mapua was shocked and told Raina and Villanueva that she would sue them. Mapua subsequently called her lawyer to narrate the contents of the termination letter,[12] which reads:

March 21, 2007

x x x x x x x x x

Dear Ms. MAPUA,

x x x x x x x x x

This notice of separation, effective **March 21, 2007** should be regarded as redundancy. Your separation pay will be computed as one month's salary for every year of service, a fraction of at least six months will be considered as one year.

Your separation pay will be released on **April 20, 2007** subject to your clearance of accountabilities and as per Company policy.

x x x x x x x x x[13]

Mapua's lawyer, in a phone call, advised Villanueva that SPI violated Mapua's right to a 30-day notice.

On March 27, 2007, Mapua filed with the Labor Arbiter (LA) a complaint for illegal dismissal, claiming reinstatement or if deemed impossible, for separation pay. Afterwards, she went to a meeting with SPI, where she was given a second termination letter,[14] the contents of which were similar to the first one.[15]

On April 25, 2007, Mapua received through mail, a third Notice of Termination[16] dated March 21, 2007 but the date of

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[11] *Id*. at 112-113.

[12] *Id*. at 159.

[13] *Id*.

[14] *Id*. at 164.

[15] *Id*. at 114-115.

[16] *Id*. at 61, 96.

effectivity of the termination was changed from March 21 to April 21, 2007. It further stated that her separation pay will be released on May 20, 2007 and a notation was inscribed, "refused to sign and acknowledge" with unintelligible signatures of witnesses.

On May 13, 2007, a recruitment advertisement[17] of SPI was published in the *Philippine Daily Inquirer* (*Inquirer* advertisement, for brevity). It listed all vacancies in SPI, including a position for Marketing Communications Manager under Corporate Support – the same group where Mapua previously belonged.

SPI also sent a demand letter[18] dated May 15, 2007 to Mapua, asking her to pay for the remaining net book value of the company car assigned to her under SPI's car plan policy. Under the said plan, Mapua should pay the remaining net book value of her car if she resigns within five years from start of her employment date.

In her Reply[19] and Rejoinder,[20] Mapua submitted an affidavit[21] and alleged that on July 16, 2007, Prime Manpower Resources Development (Prime Manpower) posted an advertisement on the website of Jobstreet Philippines for the employment of a Corporate Development Manager in an unnamed Business Process Outsourcing (BPO) company located in Parañaque City. Mapua suspected that this advertisement was for SPI because the writing style used was similar to Raina's. She also claimed that SPI is the only BPO office in Parañaque City at that time. Thereafter, she applied for the position under the pseudonym of "Jeanne Tesoro." On the day of her interview with Prime Manpower's consultant, Ms. Portia Dimatulac (Dimatulac), the latter allegedly revealed to Mapua that SPI contracted Prime Manpower's services

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[17] *Id*. at 167.

[18] *Id*. at 234.

[19] *Id*. at 248-270.

[20] *Id*. at 327-333.

[21] *Id* at 341-343.

to search for applicants for the Corporate Development Manager position.

Because of these developments, Mapua was convinced that her former position is not redundant. According to her, she underwent psychiatric counseling and incurred medical expenses as a result of emotional anguish, sleepless nights, humiliation and shame from being jobless. She also averred that the manner of her dismissal was unprofessional and incongruous with her rank and stature as a manager as other employees have witnessed how she was forced to vacate the premises on the same day of her termination.

On the other hand, SPI stated that the company regularly makes an evaluation and assessment of its corporate/organizational structure due to the unexpected growth of its business along with its partnership with ePLDT and the acquisition of CyMed.[22] As a result, SPI underwent a reorganization of its structure with the objective of streamlining its operations. This was embodied in an Inter-Office Memorandum[23] dated August 28, 2006 issued by the company's Chief Executive Officer.[24] It was then discovered after assessment and evaluation that the duties of a Corporate Development Manager could be performed/were actually being performed by other officers/managers/departments of the company. As proof that the duties of Mapua are being/could be performed by other SPI officers and employees, Villanueva executed an affidavit[25] attesting that Mapua's functions are being performed by other SPI managers and employees.

On March 21, 2007, the company, through Villanueva, served a written notice to Mapua, informing her of her termination effective April 21, 2007. Mapua refused to receive the notice, thus, Villanueva made a notation "refused to sign and acknowledge"

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[22] *Id*. at 69.

[23] *Id*. at 92-95.

[24] *Id*. at 70.

[25] *Id*. at 89-91.

on the letter. On that same day, SPI filed an Establishment Termination Report with the Office of the Regional Director of the Department of Labor and Employment-National Capital Region (DOLE-NCR) informing the latter of Mapua's termination. Mapua was offered her separation and final pay, which she refused to receive. Before the effective date of her termination, she no longer reported for work. SPI has not hired a Corporate Development Manager since then.

SPI denied contracting the services of Prime Manpower for the hiring of a Corporate Development Manager and emphasized that Prime Manpower did not even state the name of its client in the Jobstreet website. SPI also countered that Dimatulac's alleged revelation to Mapua that its client is SPI must be struck down as mere hearsay because only Mapua executed an affidavit to prove that such disclosure was made. While SPI admitted the *Inquirer* advertisement, the company stated that Mapua was a Corporate Development Manager and not a Marketing Communications Manager, and that from the designations of these positions, it is obvious that the functions of one are entirely different from that of the other.[26]

LA Decision

On June 30, 2008, the LA rendered a Decision,[27] with the following dispositive portion:

WHEREFORE, prescinding from the foregoing, the redundancy of [Mapua's] position being in want of factual basis, her termination is therefore hereby declared illegal. Accordingly, she should be paid her backwages, separation pay in lieu of reinstatement, moral and exemplary damages and attorney's fees as follows:

a) Backwages:
03/21/07-06/30/08
₱67,996 x 15.30 mos. = ₱1,040,338.80
13th Month Pay:
₱1,040,338.80/12= ₱ 520,169.40 ₱1,560,508.20

[26] *Id.* at 308-320.

[27] Issued by Labor Arbiter Daisy G. Canton-Barcelona; *id.* at 349-384.

b)	Separation Pay: (1 mo. per year of service) 12/01/03-06/30/08 = 5.7 or 6 yrs. ₱67,996.00 x 6 =	407,976.00
c)	Moral Damages:	₱500,000.00
d)	Exemplary Damages:	250,000.00
e)	Attorney's Fees:	196,848.42
	Total Award	₱2,915,332.62

or a grand total of TWO MILLION NINE HUNDRED FIFTEEN THOUSAND THREE HUNDRED THIRTY-TWO and 62/100 (₱2,915,332.62) *Pesos only*.

Respondents are further ordered to award herein complainant the car assigned to her.

SO ORDERED.[28]

Unrelenting, SPI appealed the LA decision to the National Labor Relations Commission (NLRC).

NLRC Ruling

On October 24, 2008, the NLRC rendered its Decision,[29] with the *fallo*, as follows:

WHEREFORE, the foregoing premises considered, the instant appeal is hereby GRANTED. The Decision appealed from is REVERSED and SET ASIDE, and a new one is issued finding the appellants not guilty of illegal dismissal.

However, appellants are ordered to pay the sum of Three Hundred Thirty[-]Four Thousand Five Hundred Thirty[-]Eight Pesos and Thirty[-]Four Centavos ([₱]334,538.34) representing her separation benefits and final pay in the amount of [₱]203,988.00 and [₱]130,550.34, respectively.

SO ORDERED.[30]

In ruling so, the NLRC held that "[t]he determination of whether [Mapua's] position as Corporate Development Manager is

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[28] *Id*. at 383-384.

[29] *Id*. at 467-481.

[30] *Id*. at 480-481.

redundant is not for her to decide. It essentially and necessarily lies within the sound business management."[31] As early as August 28, 2006, Ernest Cu, SPI's Chief Executive Officer, announced the corporate changes in the company. A month earlier, the officers held their Senior Management Strategic Planning Session with the theme, "Transformation" or re-invention of SPI purposely to create an organizational structure that is streamlined, clear and efficient.[32] In fact, Nolan and Raina, Mapua's superiors were actually doing her functions with the assistance of the pool of analysts, as attested to by Villanueva.

At odds with the NLRC decision, Mapua elevated the case to the CA by way of petition for *certiorari*, arguing that based on evidence, the LA decision should be reinstated.

CA Ruling

Mapua's petition was initially dismissed by the CA in its Resolution[33] dated March 25, 2009 for lack of counsel's MCLE Compliance number, outdated IBP and PTR numbers of counsel, and lack of affidavit of service attached to the petition.

Mapua filed a motion for reconsideration which was granted by the CA, reinstating the petition in its Resolution[34] dated May 26, 2009.

On October 28, 2009, the CA promulgated its Decision,[35] reinstating the LA's decree, *viz*:

WHEREFORE, in view of the foregoing, the assailed decision dated October 24, 2008, as well as the resolution dated December 23, 2008 of the National Labor Relations Commission in NLRC LAC No. 09-003262-08 (8) NLRC NCR CN. 00-03-02761-07 are hereby **REVERSED and SET ASIDE**. The decision of the Labor Arbiter dated June 30, 2008 in NLRC-NCR Case No. 00-03-02761-07 is hereby

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[31] *Id*. at 474.

[32] *Id*.

[33] *Id*. at 607-608.

[34] *Id*. at 668-670.

[35] *Id*. at 761-784.

REINSTATED with MODIFICATION in that the amount of 13th month pay of [₱]520,169.40 is hereby reduced to [₱]86,694.90.

SO ORDERED.[36]

SPI's motion for reconsideration was denied on January 18, 2010. Thus, through a petition for review on *certiorari*, SPI submitted the following grounds for the consideration of this Court:

I

THE CA DECLARED AS ILLEGAL [MAPUA'S] SEPARATION FROM SERVICE SOLELY ON THE BASIS OF HER SELF-SERVING AND UNFOUNDED ALLEGATION OF A SUPPOSED JOB ADVERTISEMENT

II

THE CA COMPLETELY DISREGARDED THE FACT THAT [MAPUA] WAS VALIDLY SEPARATED FROM SERVICE ON THE GROUND OF REDUNDANCY WHICH IS AN AUTHORIZED CAUSE FOR TERMINATION OF EMPLOYMENT UNDER ARTICLE 283 OF THE LABOR CODE AND PREVAILING JURISPRUDENCE

III

THE CA FOUND THAT [MAPUA] WAS NOT ACCORDED HER RIGHT TO DUE PROCESS IN UTTER DEROGATION OF THE APPLICABLE PROVISIONS OF THE LABOR CODE AND THE PERTINENT JURISPRUDENCE

IV

THE CA COMPLETELY AFFIRMED THE AWARDS OF SEPARATION PAY, BACKWAGES, DAMAGES AND ATTORNEY'S FEES IN THE [LA'S] DECISION IN TOTAL DISREGARD OF THE APPLICABLE LAW AND JURISPRUDENCE

V

THE CA UPHELD THE [LA'S] DECISION HOLDING INDIVIDUAL PETITIONER SOLIDARILY AND PERSONALLY LIABLE TO [MAPUA] WITHOUT SHOWING ANY BASIS THEREFOR[37]

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[36] *Id*. at 783.

[37] *Id*. at 17.

Our Ruling

The Court sustains the CA's ruling.

Mapua was dismissed from employment supposedly due to redundancy. However, she contended that her position as Corporate Development Manager is not redundant. She cited that SPI was in fact actively looking for her replacement after she was terminated. Furthermore, SPI violated her right to procedural due process when her termination was made effective on the same day she was notified of it.

Article 283 of the Labor Code provides for the following:

> ART. 283. Closure of establishment and reduction of personnel. – The employer may also terminate the employment of any employee due to installation of labor-saving devices, **redundancy**, retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title, by serving **a written notice on the worker and the Department of Labor and Employment at least one (1) month before the intended date thereof. In case of termination due to installation of labor-saving devices or redundancy, the worker affected thereby shall be entitled to a separation pay** equivalent to at least one (1) month pay or to at least one (1) month pay for every year of service, whichever is higher. In case of retrenchment to prevent losses and in cases of closures or cessation of operations of establishment or undertaking not due to serious business losses and financial reverses, the separation pay shall be equivalent to one (1) month pay or at least one-half (½) month pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered as one (1) whole year. (Emphasis ours)

Expounding on the above requirements of written notice and separation pay, this Court in *Asian Alcohol Corporation v. NLRC*[38] pronounced that for a valid implementation of a redundancy program, the employer must comply with the following requisites: (1) written notice served on both the employee and the DOLE at least one month prior to the intended date of

[38] 364 Phil. 912 (1999).

termination; (2) payment of separation pay equivalent to at least one month pay or at least one month pay for every year of service, whichever is higher; (3) good faith in abolishing the redundant position; and (4) fair and reasonable criteria in ascertaining what positions are to be declared redundant.[39]

Anent the first requirement which is written notice served on both the employee and the DOLE at least one month prior to the intended date of termination, SPI had discharged the burden of proving that it submitted a notice to the DOLE on March 21, 2007, stating therein that the effective date of termination is on April 21, 2007. It is, however, quite peculiar that two kinds of notices were served to Mapua. One termination letter stated that its date of effectivity is on the same day, March 21, 2007. The other termination letter sent through mail to Mapua's residence stated that the effective date of her termination is on April 21, 2007.

Explaining the discrepancy, SPI alleged that the company served a notice to Mapua on March 21, 2007, which stated that the effective date of termination is on April 21, 2007. However she refused to acknowledge or accept the letter. Later on, Mapua requested for a copy of the said letter but due to inadvertence and oversight, a draft of the termination letter bearing a wrong effectivity date was given to her. To correct the oversight, a copy of the original letter was sent to her through mail.[40]

Our question is, after Mapua initially refused to accept the letter, why did SPI make a new letter instead of just giving her the first one – which the Court notes was already signed and witnessed by other employees? Curiously, there was neither allegation nor proof that the original letter was misplaced or lost which would necessitate the drafting of a new one. SPI did not even explain in the second letter that the same was being sent in lieu of the one given to her. Hence, SPI must shoulder the consequence of causing the confusion brought by the variations of termination letters given to Mapua.

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[39] *Id*. at 930.

[40] *Rollo*, p. 244.

Also, crucial to the determination of the effective date of termination was that Mapua was very specific as regards what happened immediately after: "Ms. Villanueva had Ms. Mapua's assigned laptop computer and cellphone immediately taken by Human Resources supervisor, Ms. Dhang Rondael. Within about an hour, Ms. Mapua's landline phone ceased to function after Ms. Villanueva's and Mr. Raina's announcement." Her company I.D. was taken away from her that very same day.[41] To counter these statements, SPI merely stated that before the effective date of Mapua's termination on April 21, 2007, she no longer reported for work. To this Court, this is insufficient rebuttal to the precise narrative of Mapua.

On the matter of separation pay, there is no question that SPI indeed offered separation pay to Mapua, but the offer must be accompanied with good faith in the abolishment of the redundant position and fair and reasonable criteria in ascertaining the redundant position. It is insignificant that the amount offered to Mapua is higher than what the law requires because the Court has previously noted that "a job is more than the salary that it carries. There is a psychological effect or a stigma in immediately finding one's self laid off from work."[42]

Moving on to the issue of the validity of redundancy program, SPI asserted that an employer has the unbridled right to conduct its own business in order to achieve the results it desires. To prove that Villanueva's functions are redundant, SPI submitted an Inter-Office Memorandum[43] and affidavit executed by its Human Resources Director, Villanueva. The pertinent portions of the memorandum read:

ORGANIZATION STRUCTURE

One of the most important elements of successfully effecting change is to create an organization structure that is streamlined, clear and efficient. We think we have done that and the new format is illustrated

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[41] *Id.* at 264.

[42] *Serrano v. NLRC*, 387 Phil. 345, 354 (2000).

[43] *Rollo*, pp. 92-95.

in Attachment A. The upper part shows my direct reports who are heads of the various shared services departments and the lower part shows the set up of the business units. The important features of the structure are discussed in the following sections. For brevity, I have purposely not summarized the roles that will remain the same.

x x x x x x x x x

Corporate Development

Peter Maquera will continue to head Corporate Development but the group's scope will be expanded to include Marketing across the whole company. Essentially, Marketing will be taken out of the business units and centralized under Corporate Development. Elizabeth Nolan will move from her role as Publishing's VP of Sales and Marketing to become the head of Global Marketing. The unit will continue to focus on strengthening the SPI brand, while at the same time maximizing the effectiveness of our spending. Josie Gonzales, head of Corporate Relations, will also be transitioned to Corporate Development.[44]

The memorandum made no mention that the position of the Corporate Development Manager or any other position would be abolished or deemed redundant. In this regard, may the affidavit of Villanueva which enumerated the various functions of a Corporate Development Manager being performed by other SPI employees be considered as sufficient proof to uphold SPI's redundancy program?

In *AMA Computer College, Inc. v. Garcia, et al.*,[45] the Court held that the presentation of the new table of the organization and the certification of the Human Resources Supervisor that the positions occupied by the retrenched employees are redundant are inadequate as evidence to support the college's redundancy program. The Court quotes the related portion of its ruling:

In the case at bar, ACC attempted to establish its streamlining program by presenting its **new table of organization**. ACC also submitted a **certification by its Human Resources Supervisor**, Ma.

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[44] *Id*. at 92, 95.

[45] 574 Phil. 409 (2008).

Jazmin Reginaldo, that the functions and duties of many rank and file employees, including the positions of Garcia and Balla as Library Aide and Guidance Assistant, respectively, are now being performed by the supervisory employees. **These, however, do not satisfy the requirement of substantial evidence that a reasonable mind might accept as adequate to support a conclusion**. As they are, they are grossly inadequate and mainly self-serving. **More compelling evidence would have been a comparison of the old and new staffing patterns, a description of the abolished and newly created positions, and proof of the set business targets and failure to attain the same which necessitated the reorganization or streamlining**.[46] (Citations omitted and emphasis ours)

Also connected with the evidence negating redundancy was SPI's publication of job vacancies after Mapua was terminated from employment. SPI maintained that the CA erred when it considered Mapua's self-serving affidavit as regards the Prime Manpower advertisement because the allegations therein were based on Mapua's unfounded suspicions. Also, the failure of Mapua to present a sworn statement of Dimatulac renders the former's statements hearsay.

Even if we disregard Mapua's affidavit as regards the Prime Manpower advertisement, SPI admitted that it caused the *Inquirer* advertisement for a Marketing Communications Manager position.[47] Mapua alleged that this advertisement belied the claim of SPI that her position is redundant because the Corporate Development division was only renamed to Marketing division.

Instead of explaining how the functions of a Marketing Communications Manager differ from a Corporate Development Manager, SPI hardly disputed Mapua when it stated that, "[j]udging from the titles or designation of the positions, it is obvious that the functions of one are entirely different from that of the other."[48] SPI, being the employer, has possession of valuable information concerning the functions of the offices

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[46] *Id*. at 423.

[47] *Rollo*, p. 23.

[48] *Id*.

within its organization. Nevertheless, it did not even bother to differentiate the two positions.

Furthermore, on the assumption that the functions of a Marketing Communications Manager are different from that of a Corporate Development Manager, it was not even discussed why Mapua was not considered for the position. While SPI had no legal duty to hire Mapua as a Marketing Communications Manager, it could have clarified why she is not qualified for that position. In fact, Mapua brought up the subject of transfer to Villanueva and Raina several times prior to her termination but to no avail. There was even no showing that Mapua could not perform the duties of a Marketing Communications Manager.

Therefore, even though the CA based its ruling only on the Prime Manpower advertisement coupled with the purported disclosure to Mapua, the Court holds that the confluence of other factors supports the said ruling.

The Court does not agree with the rationalization of the NLRC that "[i]f it were true that her position was not redundant and indispensable, then the company must have already hired a new one to replace her in order not to jeopardize its business operations. The fact that there is none only proves that her position was not necessary and therefore superfluous."[49]

What the above reasoning of the NLRC failed to perceive is that "[o]f primordial consideration is not the nomenclature or title given to the employee, but the nature of his functions."[50] "It is not the job title but the actual work that the employee performs."[51] Also, change in the job title is not synonymous to a change in the functions. A position cannot be abolished by a

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[49] *Id*. at 479.

[50] *SCA Hygiene Products Corporation Employees Association-FFW v. SCA Hygiene Products Corporation*, G.R. No. 182877, August 9, 2010, 627 SCRA 414, 423, citing *National Federation of Labor Unions [NAFLU] v. NLRC*, 279 Phil. 386, 393 (1991).

[51] *Estiva v. National Labor Relations Commission*, G.R. No. 95145, August 5, 1993, 225 SCRA 169.

mere change of job title. In cases of redundancy, the management should adduce evidence and prove that a position which was created in place of a previous one should pertain to functions which are dissimilar and incongruous to the abolished office.

Thus, in *Caltex (Phils.), Inc. (now Chevron Phils., Inc.) v. NLRC*,[52] the Court dismissed the employer's claim of redundancy because it was shown that after declaring the employee's position of Senior Accounting Analyst as redundant, the company opened other accounting positions (Terminal Accountant and Internal Auditor) for hiring. There was no showing that the private respondent therein could not perform the functions demanded of the vacant positions, to which he could be transferred to instead of being dismissed.

On the issue of the solidary obligation of the corporate officers impleaded *vis-à-vis* the corporation for Mapua's illegal dismissal, "[i]t is hornbook principle that personal liability of corporate directors, trustees or officers attaches only when: (a) they assent to a patently unlawful act of the corporation, or when they are guilty of bad faith or gross negligence in directing its affairs, or when there is a conflict of interest resulting in damages to the corporation, its stockholders or other persons; (b) they consent to the issuance of watered down stocks or when, having knowledge of such issuance, do not forthwith file with the corporate secretary their written objection; (c) they agree to hold themselves personally and solidarily liable with the corporation; or (d) they are made by specific provision of law personally answerable for their corporate action."[53]

While the Court finds Mapua's averments against Villanueva, Nolan, Maquera and Raina as detailed and exhaustive, the Court takes notice that these are mostly suppositions on her part. Thus, the Court cannot apply the above-enumerated exceptions when

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[52] 562 Phil. 167 (2007).

[53] *Abbott Laboratories, Philippines, Cecille A. Terrible, Edwin D. Feist, Maria Olivia T. Yabutmisa, Teresita C. Bernardo, and Allan G. Almazar v. Pearlie Ann F. Alcaraz*, G.R. No. 192571, July 23, 2013, citing *Carag v. NLRC*, 548 Phil. 581, 605 (2007).

a corporate officer becomes personally liable for the obligation of a corporation to this case.

With respect to the vehicle under the company car plan which the LA awarded to Mapua, the Court rules that the subject matter is not within the jurisdiction of the LA but with the regular courts, the remedy being civil in nature arising from a contractual obligation, following this Court's ruling in several cases.[54]

The Court sustains the CA's award of moral and exemplary damages. Award of moral and exemplary damages for an illegally dismissed employee is proper where the employee had been harassed and arbitrarily terminated by the employer. Moral damages may be awarded to compensate one for diverse injuries such as mental anguish, besmirched reputation, wounded feelings, and social humiliation occasioned by the employer's unreasonable dismissal of the employee. The Court has consistently accorded the working class a right to recover damages for unjust dismissals tainted with bad faith; where the motive of the employer in dismissing the employee is far from noble. The award of such damages is based not on the Labor Code but on Article 220 of the Civil Code.[55] However, the Court observes that the CA decision affirming the LA's award of ₱500,000.00 and ₱250,000.00 as moral and exemplary damages, respectively, is evidently excessive because the purpose for awarding damages is not to enrich the illegally dismissed employee. Consequently, the Court hereby reduces the amount of ₱50,000.00 each as moral and exemplary damages.[56]

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[54] *Manese v. Jollibee Foods Corporation,* G.R. No. 170454, October 11, 2012, 684 SCRA 34; *Tamonte v. Hongkong and Shanghai Banking Corporation Ltd.*, G.R. No. 166970, August 17, 2011, 655 SCRA 614; *Smart Communications, Inc. v. Astorga,* 566 Phil. 422 (2008).

[55] *Coca-Cola Bottlers Philippines, Inc. v. Del Villar,* G.R. No. 163091, October 6, 2010, 632 SCRA 293, 320-321.

[56] Amount of damages is pursuant to ruling in *General Milling Corporation v. Viajar,* G.R. No. 181738, January 30, 2013, 689 SCRA 598, which affirmed CA's award of damages.

Mapua is also entitled to attorney's fees but the Court is modifying the amount of ₱196,848.42 awarded by the LA and fix such attorney's fees in the amount of ten percent (10%) of the total monetary award, pursuant to Article 111[57] of the Labor Code.

WHEREFORE, the Decision dated October 28, 2009 and Resolution dated January 18, 2010 of the Court of Appeals in CA-G.R. SP. No. 107879 are hereby **AFFIRMED** with the following **MODIFICATIONS**:

1. Moral and exemplary damages is hereby reduced to ₱50,000.00 each; and
2. Attorney's fees shall be computed at ten percent (10%) of the aggregate monetary award.

The monetary awards shall earn interest at the rate of six percent (6%) *per annum* from the time of respondent Victoria K. Mapua's illegal dismissal until finality of this Decision, and twelve percent (12%) legal interest thereafter until fully paid.

Petitioner SPI Technologies, Inc. shall be liable for the foregoing awards.

SO ORDERED.

Sereno, C.J. (Chairperson), Leonardo-de Castro, Bersamin, and *Villarama, Jr., JJ.,* concur.

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[57] Art. 111. *Attorney's fees* – In cases of unlawful withholding of wages, the culpable party may be assessed attorney's fees equivalent to ten percent of the amount of wages recovered.

It shall be unlawful for any person to demand or accept, in any judicial or administrative proceedings for the recovery of wages, attorney's fees which exceed ten percent of the amount of wages recovered.

FIRST DIVISION

[G.R. No. 192582. April 7, 2014]

BLUER THAN BLUE JOINT VENTURES COMPANY/ MARY ANN DELA VEGA, *petitioners, vs.* **GLYZA ESTEBAN,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; LOSS OF TRUST AND CONFIDENCE IN FIDUCIARY RANK-AND-FILE EMPLOYEES; ELUCIDATED.— Loss of trust and confidence is premised on the fact that the employee concerned holds a position of responsibility, trust and confidence. The employee must be invested with confidence on delicate matters, such as the custody, handling, care and protection of the employer's property and funds. "[W]ith respect to rank-and-file personnel, loss of trust and confidence as ground for valid dismissal requires proof of involvement in the alleged events in question, and that mere uncorroborated assertions and accusations by the employer will not be sufficient." x x x Among the fiduciary rank-and-file employees are cashiers, auditors, property custodians, or **those who, in the normal exercise of their functions, regularly handle significant amounts of money or property**. These employees, though rank-and-file, are routinely charged with the care and custody of the employer's money or property, and are thus classified as occupying positions of trust and confidence. x x x As consistently ruled by the Court, it is not the job title but the actual work that the employee performs that determines whether he or she occupies a position of trust and confidence. x x x Loss of trust and confidence to be a valid cause for dismissal must be work related such as would show **the employee concerned to be unfit to continue working for the employer and it must be based on a wilful breach of trust and founded on clearly established facts**. Such breach is wilful if it is done intentionally, knowingly, and purposely, without justifiable excuse as distinguished from an act done carelessly, thoughtlessly, heedlessly or inadvertently. The loss of trust and confidence must spring

from the voluntary or wilful act of the employee, or by reason of some blameworthy act or omission on the part of the employee. x x x [Here] absent any showing that [respondent Esteban's] acts were done with "moral perverseness" that would justify the claimed loss of trust and confidence attendant to her job, the Court must sustain the conclusion that Esteban was illegally dismissed.

2. **ID.; ID.; ID.; PREVENTIVE SUSPENSION MAY BE IMPOSED DURING INVESTIGATION OF AN ALLEGED VIOLATION; CASE AT BAR.—** Preventive suspension is a measure allowed by law and afforded to the employer if an employee's continued employment poses a serious and imminent threat to the employer's life or property or of his co-workers. It may be legally imposed against an employee whose alleged violation is the subject of an investigation. In this case, the petitioner was acting well within its rights when it imposed a 10-day preventive suspension on Esteban. While it may be that the acts complained of were committed by Esteban almost a year before the investigation was conducted, still, it should be pointed out that Esteban was performing functions that involve handling of the petitioner's property and funds, and the petitioner had every right to protect its assets and operations pending Esteban's investigation.

3. **ID.; ID.; PROHIBITIONS REGARDING WAGES; DEDUCTION FOR LOSS OR DAMAGES; SALES NEGATIVE VARIANCES AS WAGE DEDUCTIONS; MERE ALLEGATION THAT THE SAME IS THE PRACTICE IN THE RETAIL INDUSTRY, NOT PROPER.—** The petitioner deducted the amount of ₱8,304.93 from Esteban's last salary. According to the petitioner, this represents the store's negative variance for the year 2005 to 2006. The petitioner justifies the deduction on the basis of alleged trade practice and that it is allowed by the Labor Code. Article 113 of the Labor Code provides that no employer, in his own behalf or in behalf of any person, shall make any deduction from the wages of his employees, except in cases where the employer is authorized by law or regulations issued by the Secretary of Labor and Employment, among others. The Omnibus Rules Implementing the Labor Code, meanwhile, provides: SECTION 14. *Deduction for loss or damage*. – Where the employer is engaged in a trade, occupation or business where

the practice of making deductions or requiring deposits is recognized to answer for the reimbursement of loss or damage to tools, materials, or equipment supplied by the employer to the employee, the employer may make wage deductions or require the employees to make deposits from which deductions shall be made, subject to the following conditions: (a) That the employee concerned is clearly shown to be responsible for the loss or damage; (b) That the employee is given reasonable opportunity to show cause why deduction should not be made; (c) That the amount of such deduction is fair and reasonable and shall not exceed the actual loss or damage; and (d) That the deduction from the wages of the employee does not exceed 20 percent of the employee's wages in a week. In this case, the petitioner failed to sufficiently establish that Esteban was responsible for the negative variance it had in its sales for the year 2005 to 2006 and that Esteban was given the opportunity to show cause the deduction from her last salary should not be made. The Court cannot accept the petitioner's statement that it is the practice in the retail industry to deduct variances from an employee's salary, without more.

APPEARANCES OF COUNSEL

Zambrano & Gruba Law Offices for petitioners.
Pablo Magat for respondent.

D E C I S I O N

REYES, *J.*:

"It is not the job title but the actual work that the employee performs that determines whether he or she occupies a position of trust and confidence."[1] In this case, while respondent's position was denominated as Sales Clerk, the nature of her work included inventory and cashiering, a function that clearly falls within the sphere of rank-and-file positions imbued with trust and confidence.

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[1] *M+W Zander Phils. Inc., et al. v. Enriquez*, 606 Phil. 591, 609 (2009).

Facts of the Case

Respondent Glyza Esteban (Esteban) was employed in January 2004 as Sales Clerk, and assigned at Bluer Than Blue Joint Ventures Company's (petitioner) EGG boutique in SM City Marilao, Bulacan, beginning the year 2006. Part of her primary tasks were attending to all customer needs, ensuring efficient inventory, coordinating orders from clients, cashiering and reporting to the accounting department.

In November 2006, the petitioner received a report that several employees have access to its point-of-sale (POS) system through a universal password given by Elmer Flores (Flores). Upon investigation, it was discovered that it was Esteban who gave Flores the password. The petitioner sent a letter memorandum to Esteban on November 8, 2006, asking her to explain in writing why she should not be disciplinary dealt with for tampering with the company's POS system through the use of an unauthorized password. Esteban was also placed under preventive suspension for ten days.

In her explanation, Esteban admitted that she used the universal password three times on the same day in December 2005, after she learned of it from two other employees who she saw browsing through the petitioner's sales inquiry. She inquired how the employees were able to open the system and she was told that they used the "123456" password.

On November 13, 2006, Esteban's preventive suspension was lifted, but at the same time, a notice of termination was sent to her, finding her explanation unsatisfactory and terminating her employment immediately on the ground of loss of trust and confidence. Esteban was given her final pay, including benefits and bonuses, less inventory variances incurred by the store amounting to ₱8,304.93. Esteban signed a quitclaim and release in favor of the petitioner.

On December 6, 2006, Esteban filed a complaint for illegal dismissal, illegal suspension, holiday pay, rest day and separation pay.

In a Decision[2] dated September 28, 2007, the Labor Arbiter (LA) ruled in favor of Esteban and found that she was illegally dismissed. The LA also awarded separation pay, backwages, unpaid salary during her preventive suspension and attorney's fees. The dispositive portion of the LA decision provides:

> **WHEREFORE**, a Decision is hereby rendered declaring [Esteban] to have been illegally dismissed. Corollarily, she is entitled for the payment of separation pay as prayed for at one month salary for every year of service, plus backwages from November 13, 2006 when she was dismissed up to the rendition of this Decision.
>
> Further, as [Esteban] was illegally suspended she is entitled to salaries during her suspension from November 9-13, 2006.
>
> In addition, an attorney's fees equivalent to ten (10%) percent of the total award is hereby granted, computed as follows:

a)	Backwages			
	11/13/06 - 9/28/07	=	10.50 mos.	
	[₱]350 x 26 x 10.50	=	[₱]95,550.00	
	13th Month Pay			
	1/12 of [₱]95,550.00	=	7,962.50	
	SILP			
	[₱]350 x 5/12 x 10.50	=	1,531.25	[₱]105,043.75
b)	Separation Pay			
	11/25/03 - 12/6/06	=	3 yrs.	
	[₱]350 x 26 x 3			27,300.00
c)	Unpaid Salaries			
	11/9 - 13/06	=	5 days	
	[₱]350 x 5	=		1,750.00
				[₱]134,093.75
	Ten (10%) Percent Attorney's Fees			13,409.37
	TOTAL			**[₱]147,503.12**

> **SO ORDERED**.[3]

The petitioner filed an appeal with the National Labor Relations Commission (NLRC), and in its Decision[4] dated September 23,

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[2] Issued by Labor Arbiter Lilia S. Savari; *rollo,* pp. 145-157.

[3] *Id*. at 157.

[4] *Id*. at 185-201.

2008, the NLRC reversed the decision of the LA and dismissed the case for illegal dismissal. The dispositive portion of the NLRC decision reads:

> **WHEREFORE**, the decision appealed from is hereby reversed and set aside and in its stead a new one is rendered dismissing this case for lack of merit.
>
> [Petitioners] however are ordered to refund to [Esteban] the amount of [₱]8,304.93 which was illegally deducted from her salary.
>
> **SO ORDERED**.[5]

Thus, Esteban went to the Court of Appeals (CA) on *certiorari*. In the assailed Decision[6] dated November 25, 2009, the CA granted Esteban's petition and reinstated the LA decision, to wit:

> **WHEREFORE**, premises considered, the petition is hereby **GRANTED**. The assailed Decision dated September 23, 2008 and Resolution dated November 27, 2008 of public respondent National Labor Relations Commission are **ANNULLED and SET ASIDE**[.] Accordingly, the Decision of the Labor Arbiter dated September 28, 2007 is **REINSTATED** with **MODIFICATION**, that the award of separation pay is computed from January 2, 2004, and not from November 25, 2003.
>
> **SO ORDERED**.[7]

Hence, this petition with the following assignment of errors:

I. THE HONORABLE COURT OF APPEALS GRAVELY ABUSED ITS DISCRETION WHEN IT HELD THAT RANK-AND-FILE EMPLOYEES CANNOT BE DISMISSED ON GROUND OF LOSS OF TRUST AND CONFIDENCE.

II. THE HONORABLE COURT OF APPEALS GRAVELY ABUSED ITS DISCRETION IN APPLYING THE

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[5] *Id*. at 200-201.

[6] Penned by Juan Q. Enriquez, Jr., with Associate Justices Pampio A. Abarintos and Francisco P. Acosta, concurring; *id.* at 41-52.

[7] *Id*. at 51.

PRINCIPLE OF REASONABLE PROPORTIONALITY ON THE WRONGFUL ACTS OF RESPONDENT ESTEBAN.

III. THE HONORABLE COURT OF APPEALS GRAVELY ABUSED ITS DISCRETION IN HOLDING THAT THE PREVENTIVE SUSPENSION OF RESPONDENT ESTEBAN WAS UNWARRANTED.

IV. THE HONORABLE COURT OF APPEALS GRAVELY ABUSED ITS DISCRETION IN HOLDING THAT THE WAGE DEDUCTION FOR THE NEGATIVE VARIANCE AMOUNTING TO [₱]8,304.93 IS UNFOUNDED.[8]

The petitioner argues that it had just cause to terminate the employment of Esteban, that is, loss of trust and confidence. Esteban, the petitioner believes, is a rank-and-file employee whose nature of work is reposed with trust and confidence. Her unauthorized access to the POS system of the company and her dissemination of the unauthorized password, which Esteban admitted, is a breach of trust and confidence, and justifies her dismissal.[9]

The petitioner also contends that the CA failed to appreciate the significance of Esteban's infraction when it ruled that suspension would have sufficed to discipline her. Esteban's length of service should also not have been considered to mitigate the penalty imposed, as her acts show a lack of concern for her employer. As regards her preventive suspension, the petitioner maintains that it was justified in imposing the same despite that the acts were committed almost a year before the investigation since it did not have any prior knowledge of the infraction.[10]

Finally, the petitioner contends that the deduction on Esteban's wages of the negative variances in the sales is allowed by the

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[8] *Id.* at 22.

[9] *Id.* at 22-28.

[10] *Id.* at 28-33.

Labor Code, and such practice has been widely recognized in the retail industry.[11]

Esteban, on the other hand, avers that the competency clause she signed with the petitioner merely states the following functions: (1) attend to and assist the customer in all their needs; (2) conduct physical inventory; (3) clean and tidy up the merchandise and store; and (4) coordinate with the stockroom for orders. As regards the cashiering function, it merely states "to follow."[12] As such, her main task is that of a sales clerk.

Esteban also avers, albeit belatedly, that the notice to explain given to her did not identify the acts or omissions allegedly committed by her. She also contends that it was the company's fault in not creating a strong password, and that she was forced into signing the quitclaim and waiver, among others.[13]

Ruling of the Court

The LA and the CA were one in ruling that Esteban was illegally dismissed by the petitioner. It was their finding that the position occupied by Esteban was that of a rank-and-file employee and she is neither a supervisor, manager nor a cashier; thus, she does not hold a position of trust and confidence.[14] The CA also affirmed the ruling of the LA that Esteban's preventive suspension was not warranted.[15] The CA also upheld the finding of the NLRC that the deduction of ₱8,304.93, representing the store's negative variance, from Esteban's salary violates Article 113 of the Labor Code, which prohibits wage deduction.[16]

The NLRC, on the other hand, found that Esteban was dismissed for cause. According to the NLRC, Esteban admitted

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[11] *Id*. at 33-34.

[12] *Id*. at 401-402.

[13] *Id*. at 405-410.

[14] *Id*. at 49, 155.

[15] *Id*. at 50.

[16] *Id*.

that she violated the petitioner when she made an unauthorized access to the POS system, and even shared the password to another employee. The NLRC also rejected Esteban's assertion that her job as sales clerk does not occupy a position of trust, and that her preventive suspension was not warranted. With regard to her waiver and quitclaim, the NLRC upheld its validity as Esteban signed the same with full awareness that she committed a wrong.[17]

Loss of trust and confidence as a valid ground for dismissal from employment

The antecedent facts that gave rise to Esteban's dismissal from employment are not disputed in this case. The issue is whether Esteban's acts constitute just cause to terminate her employment with the company on the ground of loss of trust and confidence.

Loss of trust and confidence is premised on the fact that the employee concerned holds a position of responsibility, trust and confidence. The employee must be invested with confidence on delicate matters, such as the custody, handling, care and protection of the employer's property and funds.[18] "[W]ith respect to rank-and-file personnel, loss of trust and confidence as ground for valid dismissal requires proof of involvement in the alleged events in question, and that mere uncorroborated assertions and accusations by the employer will not be sufficient."[19]

Esteban is, no doubt, a rank-and-file employee. The question now is whether she occupies a position of trust and confidence.

Among the fiduciary rank-and-file employees are cashiers, auditors, property custodians, or **those who, in the normal exercise of their functions, regularly handle significant amounts**

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[17] *Id.* at 198-200.

[18] *Caltex (Philippines), Inc. v. Agad*, G.R. No. 162017, April 23, 2010, 619 SCRA 196, 214.

[19] *Zenaida D. Mendoza v. HMS Credit Corporation*, G.R. No. 187232, April 17, 2013, citing *Etcuban v. Sulpicio Lines*, 489 SCRA 483, 496-497.

of money or property.[20] These employees, though rank-and-file, are routinely charged with the care and custody of the employer's money or property, and are thus classified as occupying positions of trust and confidence.[21]

In this case, Esteban was a sales clerk. Her duties, however, were more than that of a sales clerk. Aside from attending to customers and tending to the shop, Esteban also assumed cashiering duties. This, she does not deny; instead, she insists that the competency clause provided that her tasks were that of a sales clerk and the cashiering function was labelled "to follow."[22] A perusal of the competency clause, however, shows that it is merely an attestation on her part that she is competent to "meet the basic requirements needed for the position [she] is applying for x x x." It does not define her actual duties. As consistently ruled by the Court, it is not the job title but the actual work that the employee performs that determines whether he or she occupies a position of trust and confidence.[23] In *Philippine Plaza Holdings, Inc. v. Episcope*,[24] the Court ruled that a service attendant, who was tasked to attend to dining guests, handle their bills and receive payments for transmittal to the cashier and was therefore involved in the handling of company funds, is considered an employee occupying a position of trust and confidence. Similarly in Esteban's case, given that she had in her care and custody the store's property and funds, she is considered as a rank-and-file employee occupying a position of trust and confidence.

Proceeding from the above conclusion, the pivotal question that must be answered is whether Esteban's acts constitute just cause to terminate her employment.

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[20] *Eric Alvarez v. Golden Tri Bloc, Inc. and Enrique Lee*, G.R. No. 202158, September 25, 2013.

[21] *Id*.

[22] *Rollo*, pp. 413-415.

[23] *Abel v. Philex Mining Corporation*, G.R. No. 178976, July 31, 2009, 594 SCRA 683, 694; *M+W Zander Phils., Inc., et al. v. Enriquez, supra* note 1; *Bristol Myers Squibb (Phils.) Inc. v. Baban*, 594 Phil. 620, 629 (2008).

[24] G.R. No. 192826, February 27, 2013, 692 SCRA 227.

Loss of trust and confidence to be a valid cause for dismissal must be work related such as would show **the employee concerned to be unfit to continue working for the employer and it must be based on a wilful breach of trust and founded on clearly established facts**.[25] Such breach is wilful if it is done intentionally, knowingly, and purposely, without justifiable excuse as distinguished from an act done carelessly, thoughtlessly, heedlessly or inadvertently.[26] The loss of trust and confidence must spring from the voluntary or wilful act of the employee, or by reason of some blameworthy act or omission on the part of the employee.[27]

In this case, the Court finds that the acts committed by Esteban do not amount to a wilful breach of trust. She admitted that she accessed the POS system[28] with the use of the unauthorized "123456" password. She did so, however, out of curiosity and without any obvious intention of defrauding the petitioner. As professed by Esteban, "she was acting in good faith in verifying what her co-staff told her about the opening of the computer by the use of the "123456" password, x x x. She even told her co-staff not to open again said computer, and that was the first and last time she opened said computer."[29] Moreover, the

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[25] *Eric Alvarez v. Golden Tri Bloc, Inc. and Enrique Lee*, *supra* note 20; *Rexie Hormillosa v. Coca-Cola Bottlers, Inc.*, G.R. No. 198699, October 9, 2013, citing *Bristol Myers Squibb (Phils.) Inc. v. Baban*, *supra* note 23, at 628.

[26] *The Coca-Cola Export Corporation v. Gacayan*, G.R. No. 149433, June 22, 2011,652 SCRA 463, 471.

[27] *Id.* at 471-472.

[28] A point-of-sale (POS) terminal is a computerized replacement for a cash register. A POS system can include the ability to record and track customer orders, process credit and debit cards, connect to other systems in a network, and manage inventory. Generally, a POS terminal has as its core a personal computer, which is provided with application-specific programs and I/O devices for the particular environment in which it will serve. POS terminals are used in most industries that have a point of sale such as a service desk, including restaurants, lodging, entertainment, and museums. (http://www.bir.gov.ph/reginfo/regcrm.htm, viewed on March 25, 2014)

[29] *Rollo*, pp. 257-258.

petitioner even admitted that Esteban has her own password to the POS system. If it was her intention to manipulate the store's inventory and funds, she could have done so long before she had knowledge of the unauthorized password. But the facts on hand show that she did not. The petitioner also failed to establish a substantial connection between Esteban's use of the "123456" password and any loss suffered by the petitioner. Indeed, it may be true that, as posited by the petitioner, it is the fact that she used the password that gives cause to the loss of trust and confidence on Esteban. However, as ruled above, such breach must have been done intentionally, knowingly, and purposely, and without any justifiable excuse, and not simply something done carelessly, thoughtlessly, heedlessly or inadvertently. To the Court's mind, Esteban's lapse is, at best, a careless act that does not merit the imposition of the penalty of dismissal.

The Court is not saying that Esteban is innocent of any breach of company policy. That she relayed the password to another employee is likewise demonstrative of her mindless appreciation of her duties as a sales clerk in the petitioner's employ. But absent any showing that her acts were done with "moral perverseness" that would justify the claimed loss of trust and confidence attendant to her job,[30] the Court must sustain the conclusion that Esteban was illegally dismissed. As stated by the CA, "[s]uspension would have sufficed as punishment, considering that the petitioner had already been with the company for more than 2 years, and the petitioner apologized and readily admitted her mistake in her written explanation, and considering that no clear and convincing evidence of loss or prejudice, which was suffered by the [petitioner] from [Esteban's] supposed infraction."[31]

Preventive suspension during investigation

Preventive suspension is a measure allowed by law and afforded to the employer if an employee's continued employment poses

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[30] *Lima Land, Inc. v. Cuevas*, G.R. No. 169523, June 16, 2010, 621 SCRA 36, 50.

[31] *Rollo*, p. 49.

a serious and imminent threat to the employer's life or property or of his co-workers.[32] It may be legally imposed against an employee whose alleged violation is the subject of an investigation.[33]

In this case, the petitioner was acting well within its rights when it imposed a 10-day preventive suspension on Esteban. While it may be that the acts complained of were committed by Esteban almost a year before the investigation was conducted, still, it should be pointed out that Esteban was performing functions that involve handling of the petitioner's property and funds, and the petitioner had every right to protect its assets and operations pending Esteban's investigation.[34]

Sales negative variances as wage deductions

The petitioner deducted the amount of ₱8,304.93 from Esteban's last salary. According to the petitioner, this represents the store's negative variance for the year 2005 to 2006. The petitioner justifies the deduction on the basis of alleged trade practice and that it is allowed by the Labor Code.

Article 113 of the Labor Code provides that no employer, in his own behalf or in behalf of any person, shall make any deduction from the wages of his employees, except in cases where the employer is authorized by law or regulations issued by the Secretary of Labor and Employment, among others. The Omnibus Rules Implementing the Labor Code, meanwhile, provides:

SECTION 14. *Deduction for loss or damage*. – Where the employer is engaged in a trade, occupation or business where the practice of making deductions or requiring deposits is recognized to answer for the reimbursement of loss or damage to tools, materials, or equipment supplied by the employer to the employee, the employer may make wage deductions or require the employees to make deposits

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[32] Omnibus Rules Implementing the Labor Code, as amended by Department Order No. 9, Series of 1997, Book V, Rule XXIII, Section 8.

[33] *Mandapat v. Add Force Personnel Services, Inc.*, G.R. No. 180285, July 6, 2010, 624 SCRA 155, 162.

[34] *Id*. at 163.

from which deductions shall be made, subject to the following conditions:

(a) That the employee concerned is clearly shown to be responsible for the loss or damage;

(b) That the employee is given reasonable opportunity to show cause why deduction should not be made;

(c) That the amount of such deduction is fair and reasonable and shall not exceed the actual loss or damage; and

(d) That the deduction from the wages of the employee does not exceed 20 percent of the employee's wages in a week.

In this case, the petitioner failed to sufficiently establish that Esteban was responsible for the negative variance it had in its sales for the year 2005 to 2006 and that Esteban was given the opportunity to show cause the deduction from her last salary should not be made. The Court cannot accept the petitioner's statement that it is the practice in the retail industry to deduct variances from an employee's salary, without more. In *Niña Jewelry Manufacturing of Metal Arts, Inc. v. Montecillo*,[35] the Court ruled that:

> [T]he petitioners should first establish that the making of deductions from the salaries is authorized by law, or regulations issued by the Secretary of Labor. Further, the posting of cash bonds should be proven as a recognized practice in the jewelry manufacturing business, or alternatively, the petitioners should seek for the determination by the Secretary of Labor through the issuance of appropriate rules and regulations that the policy the former seeks to implement is necessary or desirable in the conduct of business. The petitioners failed in this respect. It bears stressing that without proofs that requiring deposits and effecting deductions are recognized practices, or without securing the Secretary of Labor's determination of the necessity or desirability of the same, the imposition of new policies relative to deductions and deposits can be made subject to abuse by the employers. This is not what the law intends.[36]

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[35] G.R. No. 188169, November 28, 2011, 661 SCRA 416.

[36] *Id.* at 436-437.

WHEREFORE, the petition is **PARTIALLY GRANTED**. The Decision dated November 25, 2009 and Resolution dated June 10, 2010 of the Court of Appeals in CA-G.R. SP No. 107573 insofar as it reinstated with modification the Decision of the Labor Arbiter dated September 28, 2007 are **AFFIRMED**. Insofar as it affirmed respondent Glyza Esteban's preventive suspension, the same are hereby **REVERSED**.

The Labor Arbiter is hereby **ORDERED** to re-compute the monetary award in favor of Glyza Esteban and to exclude the award of backwages during such period of preventive suspension, if any.

SO ORDERED.

Sereno, C.J. (Chairperson), Leonardo-de Castro, Bersamin, and *Villarama, Jr., JJ.,* concur.

SECOND DIVISION

[G.R. No. 193787. April 7, 2014]

SPOUSES JOSE C. ROQUE AND BEATRIZ DELA CRUZ ROQUE, with deceased Jose C. Roque represented by his substitute heir JOVETTE ROQUE-LIBREA, *petitioners, vs.* **MA. PAMELA P. AGUADO, FRUCTUOSO C. SABUG, JR., NATIONAL COUNCIL OF CHURCHES IN THE PHILIPPINES (NCCP), represented by its Secretary General SHARON ROSE JOY RUIZ-DUREMDES, LAND BANK OF THE PHILIPPINES (LBP), represented by Branch Manager EVELYN M. MONTERO, ATTY. MARIO S.P. DIAZ, in his Official Capacity as Register of Deeds for Rizal, Morong Branch, and CECILIO U. PULAN, in his Official Capacity as Sheriff, Office of the Clerk of Court, Regional Trial Court, Binangonan, Rizal,** *respondents.*

SYLLABUS

1. CIVIL LAW; PROPERTIES; OWNERSHIP AND ITS MODIFICATIONS; ACTION FOR RECONVEYANCE.— The essence of an action for reconveyance is to seek the transfer of the property which was wrongfully or erroneously registered in another person's name to its rightful owner or to one with a better right. Thus, it is incumbent upon the aggrieved party to show that **he has a legal claim on the property superior to that of the registered owner** and that **the property has not yet passed to the hands of an innocent purchaser for value**.

2. ID.; SPECIAL CONTRACTS; CONTRACT TO SELL; AS DISTINGUISHED FROM CONTRACT OF SALE.— [I]t has been consistently ruled that where the seller **promises to execute a deed of absolute sale upon the completion by the buyer of the payment of the purchase price**, the contract is only a contract to sell even if their agreement is denominated as a Deed of Conditional Sale, as in this case. This treatment stems from the legal characterization of a contract to sell, that is, a bilateral contract whereby the prospective seller, while **expressly reserving the ownership** of the subject property despite delivery thereof to the prospective buyer, **binds himself to sell the subject property exclusively to the prospective buyer upon fulfillment of the condition agreed upon, such as, the full payment of the purchase price**. Elsewise stated, in a contract to sell, ownership is retained by the vendor and is not to pass to the vendee until full payment of the purchase price. Explaining the subject matter further, the Court, in *Ursal v. CA*, held that: [I]n *contracts to sell* the obligation of the seller to sell becomes demandable only upon the happening of the suspensive condition, that is, the full payment of the purchase price by the buyer. It is only upon the existence of the *contract of sale* that the seller becomes obligated to transfer the ownership of the thing sold to the buyer. Prior to the existence of the *contract of sale*, the seller is not obligated to transfer the ownership to the buyer, even if there is a contract to sell between them.

3. ID.; ID.; DOUBLE SALE; NOT PRESENT WHERE PROPERTY SUBJECT OF A CONTRACT TO SELL WAS SOLD TO ANOTHER.— In the case of *Coronel v. CA*: It

is essential to distinguish between a contract to sell and a conditional contract of sale specially in cases where the subject property is sold by the owner not to the party the seller contracted with, but to a third person, as in the case at bench. In a contract to sell, there being no previous sale of the property, a third person buying such property despite the fulfilment of the suspensive condition such as the full payment of the purchase price, for instance, cannot be deemed a buyer in bad faith and the prospective buyer cannot seek the relief of reconveyance of the property. There is no double sale in such case. **Title to the property will transfer to the buyer after registration because there is no defect in the owner-seller's title *per se*, but the latter, of course, may be sued for damages by the intending buyer**. [S]uffice it to state that Sps. Roque's reliance on Article 1544 of the Civil Code has been misplaced since the contract they base their claim of ownership on is, as earlier stated, a contract to sell, and not one of sale. In *Cheng v. Genato,* the Court stated the circumstances which must concur in order to determine the applicability of Article 1544, none of which are obtaining in this case, *viz.*: (*a*) The two (or more) sales transactions in issue must pertain to exactly the same subject matter, and must be *valid sales transactions*; (*b*) The two (or more) *buyers at odds over the rightful ownership* of the subject matter must each represent conflicting interests; and (*c*) The two (or more) buyers at odds over the rightful ownership of the subject matter *must each have bought from the same seller*.

4. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; FACTUAL ISSUES CANNOT BE RAISED FOR THE FIRST TIME ON APPEAL.— [R]egarding Sps. Roque's claims of acquisitive prescription and reimbursement for the value of the improvements they have introduced on the subject property, it is keenly observed that none of the arguments therefor were raised before the trial court or the CA. Accordingly, the Court applies the well-settled rule that litigants cannot raise an issue for the first time on appeal as this would contravene the basic rules of fair play and justice. In any event, such claims appear to involve questions of fact which are generally prohibited under a Rule 45 petition.

APPEARANCES OF COUNSEL

Virgilio U. Librea, Jr. for petitioners.
Floyd P. Lalwet for Fructuoso Sabug, Jr. & NCCP.
LBP Legal Services Group for Land Bank of the Phils.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] are the Decision[2] dated May 12, 2010 and the Resolution[3] dated September 15, 2010 of the Court of Appeals (CA) in CA G.R. CV No. 92113 which affirmed the Decision[4] dated July 8, 2008 of the Regional Trial Court of Binangonan, Rizal, Branch 69 (RTC) that dismissed Civil Case Nos. 03-022 and 05-003 for reconveyance, annulment of sale, deed of real estate mortgage, foreclosure and certificate of sale, and damages.

The Facts

The property subject of this case is a parcel of land with an area of 20,862 square meters (sq. m.), located in Sitio Tagpos, Barangay Tayuman, Binangonan, Rizal, known as Lot 18089.[5]

On July 21, 1977, petitioners-spouses Jose C. Roque and Beatriz dela Cruz Roque (Sps. Roque) and the original owners of the then unregistered Lot 18089 – namely, Velia R. Rivero (Rivero), Magdalena Aguilar, Angela Gonzales, Herminia R. Bernardo, Antonio Rivero, Araceli R. Victa, Leonor R. Topacio, and Augusto Rivero (Rivero, *et al.*) – executed a Deed of Conditional Sale of Real Property[6] (**1977 Deed of Conditional**

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[1] *Rollo*, pp. 9-28.

[2] *Id.* at 34-53. Penned by Associate Justice Normandie B. Pizarro, with Associate Justices Amelita G. Tolentino and Ruben C. Ayson, concurring.

[3] *Id.* at 55-56.

[4] CA *rollo*, pp. 22-50. Penned by Presiding Judge Narmo P. Noblejas.

[5] *Id.* at 23.

[6] *Rollo*, pp. 58-61.

Sale) over a 1,231-sq. m. portion of Lot 18089 (subject portion) for a consideration of ₱30,775.00. The parties agreed that Sps. Roque shall make an initial payment of ₱15,387.50 upon signing, while the remaining balance of the purchase price shall be payable upon the registration of Lot 18089, as well as the segregation and the concomitant issuance of a separate title over the subject portion in their names. After the deed's execution, Sps. Roque took possession and introduced improvements on the subject portion which they utilized as a *balut* factory.[7]

On August 12, 1991, Fructuoso Sabug, Jr. (Sabug, Jr.), former Treasurer of the National Council of Churches in the Philippines (NCCP), applied for a **free patent** over the entire Lot 18089 and was eventually issued Original Certificate of Title (OCT) No. M-5955[8] in his name on October 21, 1991. On June 24, 1993, Sabug, Jr. and Rivero, in her personal capacity and in representation of Rivero, *et al.*, executed a Joint Affidavit[9] (**1993 Joint Affidavit**), acknowledging that the subject portion belongs to Sps. Roque and expressed their willingness to segregate the same from the entire area of Lot 18089.

On December 8, 1999, however, Sabug, Jr., through a Deed of Absolute Sale[10] (**1999 Deed of Absolute Sale**), sold Lot 18089 to one Ma. Pamela P. Aguado (Aguado) for ₱2,500,000.00, who, in turn, caused the cancellation of OCT No. M-5955 and the issuance of Transfer Certificate of Title (TCT) No. M-96692 dated December 17, 1999[11] in her name.

Thereafter, Aguado obtained an ₱8,000,000.00 loan from the Land Bank of the Philippines (Land Bank) secured by a **mortgage** over Lot 18089.[12] When she failed to pay her loan

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[7] CA *rollo*, p. 25.

[8] Records (Civil Case No. 05-003), pp. 18-19. Including dorsal portion.

[9] *Rollo*, p. 63.

[10] Records (Civil Case No. 05-003), pp. 32-33.

[11] Records (Civil Case No. 03-022), pp. 28-29. Including the dorsal portion.

[12] See Deed of Real Estate Mortgage; *id.* at 32-34. Including the dorsal portion.

obligation, Land Bank commenced extra-judicial foreclosure proceedings and eventually tendered the highest bid in the auction sale. Upon Aguado's failure to redeem the subject property, Land Bank consolidated its ownership, and TCT No. M-115895[13] was issued in its name on July 21, 2003.[14]

On June 16, 2003, Sps. Roque filed a complaint[15] for reconveyance, annulment of sale, deed of real estate mortgage, foreclosure, and certificate of sale, and damages before the RTC, docketed as Civil Case No. 03-022, against Aguado, Sabug, Jr., NCCP, Land Bank, the Register of Deeds of Morong, Rizal, and Sheriff Cecilio U. Pulan, seeking to be declared as the true owners of the subject portion which had been erroneously included in the sale between Aguado and Sabug, Jr., and, subsequently, the mortgage to Land Bank, both covering Lot 18089 in its entirety.

In defense, NCCP and Sabug, Jr. denied any knowledge of the 1977 Deed of Conditional Sale through which the subject portion had been purportedly conveyed to Sps. Roque.[16]

For her part, Aguado raised the defense of an innocent purchaser for value as she allegedly derived her title (through the 1999 Deed of Absolute Sale) from Sabug, Jr., the registered owner in OCT No. M-5955, covering Lot 18089, which certificate of title at the time of sale was free from any lien and/or encumbrances. She also claimed that Sps. Roque's cause of action had already prescribed because their adverse claim was made only on April 21, 2003, or four (4) years from the date OCT No. M-5955 was issued in Sabug, Jr.'s name on December 17, 1999. [17]

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[13] *Id.* at 441. Including the dorsal portion.

[14] *Rollo*, p. 37.

[15] Records (Civil Case No. 03-022), pp. 1-11.

[16] *Rollo*, p. 38.

[17] *Id.* at 38-39. See also dorsal portion of OCT No. M-5955. (Records [Civil Case No. 05-003], p. 19).

On the other hand, Land Bank averred that it had no knowledge of Sps. Roque's claim relative to the subject portion, considering that at the time the loan was taken out, Lot 18089 in its entirety was registered in Aguado's name and no lien and/or encumbrance was annotated on her certificate of title.[18]

Meanwhile, on January 18, 2005, NCCP filed a separate complaint[19] also for declaration of nullity of documents and certificates of title and damages, docketed as Civil Case No. 05-003. It claimed to be the real owner of Lot 18089 which it supposedly acquired from Sabug, Jr. through an **oral contract of sale**[20] **in the early part of 1998**, followed by the execution of a Deed of Absolute Sale on December 2, 1998 (**1998 Deed of Absolute Sale**).[21] NCCP also alleged that in October of the same year, it entered into a Joint Venture Agreement (JVA) with Pilipinas Norin Construction Development Corporation (PNCDC), a company owned by Aguado's parents, for the development of its real properties, including Lot 18089, into a subdivision project, and as such, turned over its copy of OCT No. M-5955 to PNCDC.[22] Upon knowledge of the purported sale of Lot 18089 to Aguado, Sabug, Jr. denied the transaction and alleged forgery. Claiming that the Aguados[23] and PNCDC conspired to defraud NCCP, it prayed that PNCDC's corporate veil be pierced and that the Aguados be ordered to pay the amount of ₱38,092,002.00 representing the unrealized profit from the JVA.[24] Moreover, NCCP averred that Land Bank failed to exercise the diligence required to ascertain the true owners of Lot 18089. Hence, it further prayed that: (*a*) all acts of ownership and

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[18] *Id*. at 39-40.

[19] Records (Civil Case No. 05-003), pp. 1-15.

[20] *Id*. at 3.

[21] *Id*. at 20-21.

[22] *Id*. at 22-26.

[23] Namely Pamela Aguado, Emily Aguado, and Gregorio Aguado; *rollo*, p. 41.

[24] *Id*.

dominion over Lot 18089 that the bank might have done or caused to be done be declared null and void; (*b*) it be declared the true and real owners of Lot 18089; and (*c*) the Register of Deeds of Morong, Rizal be ordered to cancel any and all certificates of title covering the lot, and a new one be issued in its name.[25]

In its answer, Land Bank reiterated its stance that Lot 18089 was used as collateral for the ₱8,000,000.00 loan obtained by the Countryside Rural Bank, Aguado, and one Bella Palasaga. There being no lien and/ or encumbrance annotated on its certificate of title, *i.e.*, TCT No. M-115895, it cannot be held liable for NCCP's claims. Thus, it prayed for the dismissal of NCCP's complaint.[26]

On September 7, 2005, Civil Case Nos. 02-022 and 05-003 were ordered consolidated.[27]

The RTC Ruling

After due proceedings, the RTC rendered a Decision[28] dated July 8, 2008, dismissing the complaints of Sps. Roque and NCCP.

With respect to Sps. Roque's complaint, the RTC found that the latter failed to establish their ownership over the subject portion, considering the following: (*a*) the supposed owners-vendors, *i.e.*, Rivero, *et al.*, who executed the 1977 Deed of Conditional Sale, had no proof of their title over Lot 18089; (*b*) the 1977 Deed of Conditional Sale was not registered with the Office of the Register of Deeds;[29] (*c*) the 1977 Deed of Conditional Sale is neither a deed of conveyance nor a transfer document, as it only gives the holder the right to compel the supposed vendors to execute a deed of absolute sale upon full payment of the consideration; (*d*) neither Sps. Roque nor the

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[25] *Id.* at 40-41.

[26] *Id.* at 42.

[27] *Id.*

[28] CA *rollo*, pp. 22-50.

[29] *Id.* at 47.

alleged owners-vendors, *i.e.*, Rivero, *et al.*, have paid real property taxes in relation to Lot 18089; and (*e*) Sps. Roque's occupation of the subject portion did not ripen into ownership that can be considered superior to the ownership of Land Bank.[30] Moreover, the RTC ruled that Sps. Roque's action for reconveyance had already prescribed, having been filed ten (10) years after the issuance of OCT No. M-5955. [31]

On the other hand, regarding NCCP's complaint, the RTC observed that while it anchored its claim of ownership over Lot 18089 on the 1998 Deed of Absolute Sale, the said deed was not annotated on OCT No. M-5955. Neither was any certificate of title issued in its name nor did it take possession of Lot 18089 or paid the real property taxes therefor. Hence, NCCP's claim cannot prevail against Land Bank's title, which was adjudged by the RTC as an innocent purchaser for value. Also, the RTC disregarded NCCP's allegation that the signature of Sabug, Jr. on the 1999 Deed of Absolute Sale in favor of Aguado was forged because his signatures on both instruments bear semblances of similarity and appear genuine. Besides, the examiner from the National Bureau of Investigation, who purportedly found that Sabug, Jr.'s signature thereon was spurious leading to the dismissal of a criminal case against him, was not presented as a witness in the civil action.[32]

Finally, the RTC denied the parties' respective claims for damages.[33]

The CA Ruling

On appeal, the Court of Appeals (CA) affirmed the foregoing RTC findings in a Decision[34] dated May 12, 2010. While Land Bank was not regarded as a mortgagee/purchaser in good faith

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[30] *Id.* at 48.

[31] *Id*.

[32] *Id*. at 48-49.

[33] *Id*. at 50.

[34] *Id*. at 34-53.

with respect to the subject portion considering Sps. Roque's possession thereof,[35] the CA did not order its reconveyance or segregation in the latter's favor because of Sps. Roque's failure to pay the remaining balance of the purchase price. Hence, it only directed Land Bank to respect Sps. Roque's possession with the option to appropriate the improvements introduced thereon upon payment of compensation.[36]

As regards NCCP, the CA found that it failed to establish its right over Lot 18089 for the following reasons: (*a*) the sale to it of the lot by Sabug, Jr. was never registered; and (*b*) there is no showing that it was in possession of Lot 18089 or any portion thereof from 1998. Thus, as far as NCCP is concerned, Land Bank is a mortgagee/purchaser in good faith.[37]

Aggrieved, both Sps. Roque[38] and NCCP[39] moved for reconsideration but were denied by the CA in a Resolution[40] dated September 15, 2010, prompting them to seek further recourse before the Court.

The Issue Before the Court

The central issue in this case is whether or not the CA erred in not ordering the reconveyance of the subject portion in Sps. Roque's favor.

Sps. Roque maintain that the CA erred in not declaring them as the lawful owners of the subject portion despite having possessed the same since the execution of the 1977 Deed of Conditional Sale, sufficient for acquisitive prescription to set in in their favor.[41] To bolster their claim, they also point to the 1993 Joint Affidavit whereby Sabug, Jr. and Rivero acknowledged

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[35] *Id*. at 46-48.

[36] *Rollo,* pp. 48-50.

[37] *Id*. at 50-52.

[38] CA *rollo,* pp. 301-305. Motion for Reconsideration dated June 2, 2010.

[39] *Id*. at 292-300. Motion for Reconsideration dated June 1, 2010.

[40] *Rollo,* pp. 55-56.

[41] *Id*. at 24.

their ownership thereof.[42] Being the first purchasers and in actual possession of the disputed portion, they assert that they have a better right over the 1,231- sq. m. portion of Lot 18089 and, hence, cannot be ousted therefrom by Land Bank, which was adjudged as a mortgagee/purchaser in bad faith, pursuant to Article 1544 of the Civil Code.[43]

In opposition, Land Bank espouses that the instant petition should be dismissed for raising questions of fact, in violation of the proscription under Rule 45 of the Rules of Court which allows only pure questions of law to be raised.[44] Moreover, it denied that ownership over the subject portion had been acquired by Sps. Roque who admittedly failed to pay the remaining balance of the purchase price.[45] Besides, Land Bank points out that Sps. Roque's action for reconveyance had already prescribed.[46]

Instead of traversing the arguments of Sps. Roque, NCCP, in its Comment[47] dated December 19, 2011, advanced its own case, arguing that the CA erred in holding that it failed to establish its claimed ownership over Lot 18089 in its entirety. Incidentally, NCCP's appeal from the CA Decision dated May 12, 2010 was already denied by the Court,[48] and hence, will no longer be dealt with in this case.

The Court's Ruling

The petition lacks merit.

The essence of an action for reconveyance is to seek the transfer of the property which was wrongfully or erroneously registered

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[42] *Id*. at 22-23.

[43] *Id*. at 24-26.

[44] *Id*. at 87-92.

[45] *Id*. at 92-93.

[46] *Id*. at 93-96.

[47] *Id*. at 107-140.

[48] *Id*. at 105. See also Court's Resolution dated November 24, 2010 in G.R. No. 193875 entitled "*National Council of Churches in the Philippines v. Land Bank of the Philippines*."

in another person's name to its rightful owner or to one with a better right.[49] Thus, it is incumbent upon the aggrieved party to show that **he has a legal claim on the property superior to that of the registered owner** and that **the property has not yet passed to the hands of an innocent purchaser for value**.[50]

Sps. Roque claim that the subject portion covered by the 1977 Deed of Conditional Sale between them and Rivero, *et al.* was wrongfully included in the certificates of title covering Lot 18089, and, hence, must be segregated therefrom and their ownership thereof be confirmed. The salient portions of the said deed state:

DEED OF CONDITIONAL SALE OF REAL PROPERTY

KNOW ALL MEN BY THESE PRESENTS:

x x x x x x x x x

That for and in consideration of the sum of THIRTY THOUSAND SEVEN HUNDRED SEVENTY-FIVE PESOS (₱30,775.00), Philippine Currency, payable in the manner hereinbelow specified, the VENDORS do hereby sell, transfer and convey unto the VENDEE, or their heirs, executors, administrators, or assignors, that unsegregated portion of the above lot, x x x.

That the aforesaid amount shall be paid in two installments, the first installment which is in the amount of _____ (₱15,387.50) and the balance in the amount of _____ (₱15,387.50), shall be paid as soon as the described portion of the property shall have been registered under the Land Registration Act and a Certificate of Title issued accordingly;

That as soon as the total amount of the property has been paid and the Certificate of Title has been issued, an absolute deed of sale shall be executed accordingly;

x x x x x x x x x[51]

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[49] *National Housing Authority v. Pascual*, 564 Phil. 94, 107 (2007); *Gasataya v. Mabasa*, 545 Phil. 14, 18 (2007).

[50] *Pacete v. Asotigue*, G.R. No. 188575, December 10, 2012, 687 SCRA 570, 580; *Heirs of Valeriano Concha, Sr. v. Sps. Lumocso*, 564 Phil. 580, 593 (2007).

[51] *Rollo*, pp. 58-60. Emphasis supplied.

Examining its provisions, the Court finds that the stipulation above-highlighted shows that the 1977 Deed of Conditional Sale is actually in the nature of a contract to sell and not one of sale contrary to Sps. Roque's belief.[52] In this relation, it has been consistently ruled that where the seller **promises to execute a deed of absolute sale upon the completion by the buyer of the payment of the purchase price**, the contract is only a contract to sell even if their agreement is denominated as a Deed of Conditional Sale,[53] as in this case. This treatment stems from the legal characterization of a contract to sell, that is, a bilateral contract whereby the prospective seller, while **expressly reserving the ownership** of the subject property despite delivery thereof to the prospective buyer, **binds himself to sell the subject property exclusively to the prospective buyer upon fulfillment of the condition agreed upon, such as, the full payment of the purchase price**.[54] Elsewise stated, in a contract to sell, ownership is retained by the vendor and is not to pass to the vendee until full payment of the purchase price.[55] Explaining the subject matter further, the Court, in *Ursal v. CA*,[56] held that:

> [I]n *contracts to sell* the obligation of the seller to sell becomes demandable only upon the happening of the suspensive condition, that is, the full payment of the purchase price by the buyer. It is only upon the existence of the *contract of sale* that the seller becomes obligated to transfer the ownership of the thing sold to the buyer. Prior to the existence of the *contract of sale*, the seller is not obligated to transfer the ownership to the buyer, even if there is a contract to sell between them.

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[52] See *Tan v. Benolirao*, G.R. No. 153820, October 16, 2009, 604 SCRA 36, 48-49; *Ver Reyes v. Salvador, Sr.*, G.R. Nos. 139047 and 139365, September 11, 2008, 564 SCRA 456, 476-481.

[53] *Id.* at 49.

[54] *Ver Reyes v. Salvador, Sr.*, *supra* note 52, at 477; *Ursal v. CA*, G.R. No. 142411, October 14, 2005, 473 SCRA 52, 65; *Coronel v. CA*, 331 Phil. 294, 310 (1996).

[55] *Sps. Serrano and Herrera v. Caguiat*, 545 Phil. 660, 668 (2007).

[56] *Ursal v. CA*, *supra* note 54; *id.* at 66.

Here, it is undisputed that Sps. Roque have not paid the final installment of the purchase price.[57] As such, the condition which would have triggered the parties' obligation to enter into and thereby perfect a contract of sale in order to effectively transfer the ownership of the subject portion from the sellers (*i.e.*, Rivero *et al.*) to the buyers (Sps. Roque) cannot be deemed to have been fulfilled. Consequently, the latter cannot validly claim ownership over the subject portion even if they had made an initial payment and even took possession of the same.[58]

The Court further notes that Sps. Roque did not even take any active steps to protect their claim over the disputed portion. This remains evident from the following circumstances appearing on record: (*a*) the 1977 Deed of Conditional Sale was never registered; (*b*) they did not seek the actual/physical segregation of the disputed portion despite their knowledge of the fact that, as early as 1993, the entire Lot 18089 was registered in Sabug, Jr.'s name under OCT No. M-5955; and (*c*) while they signified their willingness to pay the balance of the purchase price,[59] Sps. Roque neither compelled Rivero, *et al.*, and/or Sabug, Jr. to accept the same nor did they consign any amount to the court, the proper application of which would have effectively fulfilled their obligation to pay the purchase price.[60] Instead, Sps. Roque waited 26 years, reckoned from the execution of the 1977 Deed of Conditional Sale, to institute an action for reconveyance (in 2003), and only after Lot 18089 was sold to Land Bank in the foreclosure sale and title thereto was consolidated in its name. Thus, in view of the foregoing, Sabug, Jr. — as the registered owner of Lot 18089 borne by the grant of his free patent application — could validly convey said property in its entirety to Aguado who, in turn, mortgaged the same to Land Bank. Besides, as aptly observed by the RTC, Sps. Roque failed to establish that the parties who sold the property to them, *i.e.*,

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[57] *Rollo*, pp. 48-49.

[58] See *Ursal v. CA*, *supra* note 54, at 67.

[59] Records (Civil Case 03-022) p. 6.

[60] See *Padilla v. Sps. Paredes*, 385 Phil. 128, 139-140 (2000).

Rivero, *et al.*, were indeed its true and lawful owners.[61] In fine, Sps. Roque failed to establish any superior right over the subject portion as against the registered owner of Lot 18089, *i.e.*, Land Bank, thereby warranting the dismissal of their reconveyance action, without prejudice to their right to seek damages against the vendors, *i.e.*, Rivero, *et al.*[62] As applied in the case of *Coronel v. CA*: [63]

> It is essential to distinguish between a contract to sell and a conditional contract of sale specially in cases where the subject property is sold by the owner not to the party the seller contracted with, but to a third person, as in the case at bench. In a contract to sell, there being no previous sale of the property, a third person buying such property despite the fulfilment of the suspensive condition such as the full payment of the purchase price, for instance, cannot be deemed a buyer in bad faith and the prospective buyer cannot seek the relief of reconveyance of the property. There is no double sale in such case. **Title to the property will transfer to the buyer after registration because there is no defect in the owner-seller's title *per se*, but the latter, of course, may be sued for damages by the intending buyer**. (Emphasis supplied)

On the matter of double sales, suffice it to state that Sps. Roque's reliance[64] on Article 1544[65] of the Civil Code has been misplaced since the contract they base their claim of ownership on is, as earlier stated, a contract to sell, and not one of sale.

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[61] CA *rollo*, pp. 47-48.

[62] See *Ver Reyes v. Salvador, Sr.*, *supra* note 52, at 483.

[63] *Supra* note 54, at 311.

[64] *Rollo*, pp. 24-26.

[65] Art. 1544. If the same thing should have been sold to different vendees, the ownership shall be transferred to the person who may have first taken possession thereof in good faith, if it should be movable property.

Should it be immovable property, the ownership shall belong to the person acquiring it who in good faith first recorded it in the Registry of Property.

Should there be no inscription, the ownership shall pertain to the person who in good faith was first in the possession; and, in the absence thereof; to the person who presents the oldest title, provided there is good faith.

In *Cheng v. Genato,*[66] the Court stated the circumstances which must concur in order to determine the applicability of Article 1544, none of which are obtaining in this case, *viz.*:

(*a*) The two (or more) sales transactions in issue must pertain to exactly the same subject matter, and must be *valid sales transactions*;

(*b*) The two (or more) *buyers at odds over the rightful ownership* of the subject matter must each represent conflicting interests; and

(*c*) The two (or more) buyers at odds over the rightful ownership of the subject matter *must each have bought from the same seller*.

Finally, regarding Sps. Roque's claims of acquisitive prescription and reimbursement for the value of the improvements they have introduced on the subject property,[67] it is keenly observed that none of the arguments therefor were raised before the trial court or the CA.[68] Accordingly, the Court applies the well-settled rule that litigants cannot raise an issue for the first time on appeal as this would contravene the basic rules of fair play and justice. In any event, such claims appear to involve questions of fact which are generally prohibited under a Rule 45 petition.[69]

With the conclusions herein reached, the Court need not belabor on the other points raised by the parties, and ultimately finds it proper to proceed with the denial of the petition.

WHEREFORE, the petition is **DENIED**. The Decision dated May 12, 2010 and the Resolution dated September 15, 2010 of

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[66] 360 Phil. 891, 909 (1998).

[67] *Rollo*, pp. 24, 26, and 27.

[68] "Settled is the rule that litigants cannot raise an issue for the first time on appeal as this would contravene the basic rules of fair play and justice." (*S.C. Megaworld Construction v. Parada*, G.R. No. 183804, September 11, 2013.)

[69] "[A]n appeal by petition for review on *certiorari* cannot determine factual issues. In the exercise of its power of review, the Court is not a trier of facts and does not normally undertake the re-examination of the evidence presented by the contending parties during the trial." (*Sps. Andrada v. Pilhino Sales Corporation*, G.R. No. 156448, February 23, 2011, 644 SCRA 1, 8-9.)

the Court of Appeals in CA G.R. CV No. 92113 are hereby **AFFIRMED.**

SO ORDERED.

Carpio (Chairperson), Brion, del Castillo, and *Perez, JJ.*, concur.

THIRD DIVISION

[G.R. No. 195687. April 7, 2014]

LAND BANK OF THE PHILIPPINES, *petitioner, vs.* **DAVID G. NAVAL, JR., JOSE SALVANTE S. ANTE, ALVIN O. ARRIZA, JACINTO Y. MANALO, RAMON D. SIAO, and ALLAN E. BENUSA, in their own names and in behalf of the Officers and Employees, both incumbent and retired, of Land Bank of the Philippines,** *respondents.* **GENEROSO DAVID and other LAND BANK OFFICERS and EMPLOYEES, represented by DAVID CUI-DAVID BUENAVENTURA and ANG LAW OFFICES,** *intervenors.* **EDWIN A. ILAGAN, MARY GRACE L. SALTING, IMELDA B. MOLOD, MA. CARMEN B. BERAQUIT, MA. SOCORRO N. REGALA, GERRY P. SALTING, REGGIE D. ABIOG, ESTHER S. VILLAR, GWENDOLYN B. DOMETITA, THERESA G. ENDAYA, MERFE F. DAGNALAN, ANTONETTE F. BALGEMINO, CELESTE R. CABATINGAN, AMELIA G. JIMENEZ, CARLOS B. FLORIN JR., DOROTHY MAY E. EMPLEO, JESUS D. EMPLEO, MILDRED BONOS, MARIBEL G. HALDOS, CHOLITA B. SESNO, CHONA LUDDIE BARELA, and GRACE L. CRUZ,** *intervenors*.

SYLLABUS

1. **POLITICAL LAW; STATUTES; REPUBLIC ACT NO. 6758 (THE SALARY STANDARDIZATION LAW); MANDATES THE INTEGRATION OF ALL ALLOWANCES; EXCEPTIONS.—** [I]n resolving the issue of whether the COLA and/or the BEP should be paid separately from the basic salary to the employees of LBP as of July 1, 1989, we should look into the very provisions of the SSL. x x x, [I]t is immediately apparent that [Sec 12 of] the SSL mandates the integration of **all allowances** except for the following: 1. Representation and transportation allowances; 2. Clothing and laundry allowances; 3. Subsistence allowance of marine officers and crew on board government vessels; 4. Subsistence allowance of hospital personnel; 5. Hazard pay; 6. Allowances of foreign service personnel stationed abroad; 7. And such other additional compensation not otherwise specified herein as may be determined by the DBM.

2. **ID.; ID.; ID.; THE COST OF LIVING ALLOWANCE AND BANK EQUITY PAY ARE DEEMED INTEGRATED IN THE STANDARDIZED SALARIES OF THE EMPLOYEES OF THE LAND BANK OF THE PHILIPPINES; RATIONALE.—** Since the COLA and the BEP are not among those expressly excluded by the SSL from integration, they should be considered as deemed integrated in the standardized salaries of LBP employees under the general rule of integration. x x x More emphatically, the Court *En Banc* declared in *Gutierrez* that the COLA is one of those allowances deemed integrated under Sec. 12 of the SSL because (1) it had not been expressly excluded from the general rule of integration and (2) it is a benefit intended to reimburse the employee for the expenses he incurred in the performance of his official functions. x x x Similar to the COLA, which have been defined in *Gutierrez* as "the cost of purchasing those goods and services which are included in an accepted standard level of consumption," the BEP had been extended by the LBP pursuant to LOI 116. Significantly, LOI 116 directed the payment of a "cost of living allowance." x x x It is more than reasonable to infer that the BEP is in fact an additional COLA extended to LBP employees under LOI 116. Thus, similar to the COLA, the payment of the BEP separately from the basic salary from July 1, 1989 cannot be allowed because (1) it has not been

expressly excluded from the general rule on integration by the first sentence of Sec. 12 of the SSL and (2) it has not been granted to reimburse LBP employees for the expenses incurred in the performance of their official duties.

3. CIVIL LAW; EFFECT AND APPLICATION OF LAWS; DOCTRINE OF *STARE DECISIS ET NON QUIETA MOVERE*; APPLIED IN CASE AT BAR.— Under the doctrine of *stare decisis et non quieta movere*, a point of law already established will be followed by the court in subsequent cases where the same legal issue is raised. Thus, we can come to no other conclusion than to deny the payment of the COLA on top of the LBP employees' basic salary from July 1, 1989 because (1) it has not been expressly excluded from the general rule on integration by the first sentence of Sec. 12 of the SSL and (2) as we have explained in *Gutierrez*, the COLA is not granted in order to reimburse employees for the expenses incurred in the performance of their official duties.

4. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; SALARIES; THE PAYMENT OF A SALARY MAY BE AMENDED BY THE POWER WHICH GRANTED IT.— A closer look of these LOIs, however, would argue against the idea that they prohibit the integration of either allowance into the basic pay of GFI employees. Nowhere in either issuances is it mandated that these allowances can only be paid on top of, and separate from, the basic and net pay of the employees of GFIs. In other words, LOI Nos. 104 and 116 are not controlling in the **manner** of the payment of these allowances to the employees. Even assuming *arguendo* that these LOIs proscribe the integration of these allowances into the basic pay, this proscription has been effectively repealed by the SSL x x x. Clearly, among the laws specifically repealed by SSL is the proviso under Sec. 2 of PD 985 x x x. As both LOI Nos. 104 and 116 have been promulgated under authority of Sec. 2, PD 985, any mandate arguably contained in the LOIs regarding the manner of payment of the COLA and/or the BEP had been effectively revoked by the SSL. Parenthetically, even before the effectivity of the SSL, the allowances given to GOCCs had already been tempered by Memorandum Order (MO) No. 177, Series of 1998, issued by then President Corazon Aquino in May 31, 1988 x x x. Thus, respondents and intervenors' claim that they have a vested

right over the payment of the COLA and the BEP on top of the monthly basic salary is unfounded. Lest it be forgotten, the rule is that the payment of a salary may be amended by the power which granted it in the first place.

5. ID.; STATUTES; REPUBLIC ACT NO. 7907; GIVES THE LAND BANK OF THE PHILIPPINES SUFFICIENT AUTONOMY TO DESIGN ITS OWN COMPENSATION PLAN BUT DOES NOT ORDER THE SEPARATION OF THE COST OF LIVING ALLOWANCE AND BANK EQUITY PAY FROM THE BASIC MONTHLY PAY.— The law that exempted petitioner LBP from the coverage of the SSL does not retroactively obliterate the integration rule laid down in the SSL. Neither did RA 7907 order the separation of the COLA and the BEP from the basic monthly. x x x [B]y RA 7907, petitioner LBP had been given sufficient independence and autonomy to design its own compensation plan, *i.e.*, to decide whether to integrate the COLA and the BEP into the basic pay. This Court cannot dictate the inclusion of the COLA and BEP contrary to the sound business judgment of LBP recognized and sustained in RA 7907. In other words, after RA 7907 became effective, it is with more reason that petitioner LBP cannot be ordered to pay the COLA and the BEP on top of the basic salary. Thus, even if we were constrained to rule that the COLA and BEP are not governed by the general integration rule of the SSL, it is still grievous error to order the payment of these allowances until the publication and effectivity of DBM-CCC No. 10, or worse, until the settlement of this controversy.

6. ID.; ID.; REPUBLIC ACT NO. 6758 (THE SALARY STANDARDIZATION LAW); THE PAYMENT OF THE COST OF LIVING ALLOWANCE AND THE BANK EQUITY PAY ON TOP OF WHAT HAS ALREADY BEEN PAID BY THE LAND BANK OF THE PHILIPPINES IN CASE AT BAR WILL CONSTITUTE DOUBLE COMPENSATION.— What is more significant is that respondents and intervenors have not questioned the fact of integration. Similarly, the appellate court found there was in fact an integration of the subject allowances to the basic pay of the employees of LBP, albeit supposedly insufficient. The observation of the appellate court regarding the resulting amount notwithstanding, the actual integration of these allowances to

> the basic salary of the respondents and the intervenors defeats the allegation of a total deprivation and/or withholding of these allowances. As such, to order the payment of the COLA and the BEP on top of what has already been paid by LBP—the basic pay with the COLA and the BEP incorporated—will constitute a prohibited double compensation. x x x Since, COLA and the similar allowance of BEP had been considered integrated into the basic salary of the employees under Sec. 12, and had in fact been integrated into the basic salary of LBP employees, there is nothing to justify a redundant back payment of these allowances.

APPEARANCES OF COUNSEL

LBP Legal Services Group for petitioner.

Martinez Alcera Atienza & Benusa Law Offices for David G. Naval, *et al.*

David Cui-David Buenaventura & Ang Law Offices for intervenor G. David.

Maria Vivencia C. Layosa for intervenors E. Ilagan, *et al.*

R E S O L U T I O N

VELASCO, JR., *J.*:

Before this Court is an Omnibus Motion[1] interposed by petitioner Land Bank of the Philippines (LBP) praying, *inter alia*, that we set aside our Resolution dated July 25, 2011[2] which denied its Petition for Review on *Certiorari*. The petition assailed the Decision[3] and Resolution[4] dated October 11, 2010 and February 22, 2011, respectively, of the Court of Appeals (CA) in CA-G.R. SP No. 99154, which in turn affirmed with

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[1] *Rollo*, pp. 350-382.

[2] *Id*. at 349.

[3] *Id*. at 12-34, 101-122. Penned by Associate Justice Franchito N. Diamante and concurred in by Associate Justices Josefina Guevara-Salonga and Mariflor P. Punzalan Castillo.

[4] *Id*. at 36-39, 125-128.

modification the June 7, 2004 Decision of the Regional Trial Court (RTC) of Manila, Branch 40.

The Facts

In accordance with Letters of Implementation No. (LOI) 104 dated October 12, 1979,[5] petitioner LBP granted its officers and employees Cost of Living Allowance (COLA) equivalent to three hundred pesos (PhP 300) or forty percent (40%) of their monthly basic salary, whichever is higher, every month.

Further, pursuant to LOI 116 dated May 12, 1980,[6] LBP gave its employees a monthly allowance called a "Bank Equity Pay" (BEP). For employees whose monthly basic salary is one thousand five hundred and one pesos (PhP 1,501) and above, the amount of BEP is five hundred pesos (PhP 500), while for those with a basic pay of one thousand five hundred pesos (PhP 1,500) and below, the monthly BEP is five hundred fifty pesos (PhP 550).[7]

On July 6, 1988, the LBP Board of Directors issued Resolution No. '88-109[8] integrating the COLA into the basic pay of LBP

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[5] *Id*. at 129-132. The pertinent provisions of LOI 104 provides:

WHEREAS, pursuant to the mandate of the Constitution, Presidential Decree No. 985 was issued to standardize compensation of government officials and employees, including those in government-owned and controlled corporations, taking into account the nature of the responsibilities pertaining to, and the qualifications required for, the positions concerned;

WHEREAS, the said Decree authorized the adoption of additional financial incentives for viable and profit-making corporations and those performing critical functions, to be supported from the earnings and profits of such corporations;

x x x x x x x x x

5. Maximum Level of Allowance and Benefits. – Allowances and benefits may be provided by individual corporations but not to exceed the following schedule, subject to aggregate ceiling indicated in Item No. 6 hereof:

a. Cost of living allowance of 40% of basic pay or ₱300 per month, whichever is higher. x x x

[6] *Id*. at 133-134.

[7] *Id*. at 186.

[8] *Id*. at 135, 188. The Resolution pertinently reads:

RESOLVED, as it is hereby resolved, That consistent with the proposal of the heads of the GFIs for a uniform approach in the administration of the

employees. The Resolution took effect on May 16, 1989[9] supposedly without any opposition from the employees of LBP.

On August 21, 1989, Republic Act No. (RA) 6758, entitled "An Act Prescribing a Revised Compensation and Position Classification System in the Government and For Other Purposes," which is otherwise known as the Salary Standardization Law (SSL), was enacted. Section 12 of said law provides, *inter alia*, for the integration/consolidation of allowances and additional compensation into the standardized salary rates save for certain additional compensation enumerated therein and others that the Department of Budget and Management (DBM) is mandated to determine, *viz*:

> Section 12. *Consolidation of Allowances and Compensation*. — **All allowances**, except for representation and transportation allowances; clothing and laundry allowances; subsistence allowance of marine officers and crew on board government vessels and hospital personnel; hazard pay; allowances of foreign service personnel stationed abroad; and such other additional compensation not otherwise specified herein as may be determined by the DBM, **shall be deemed included in the standardized salary rates herein prescribed.** Such other additional compensation, whether in cash or in kind, being received by incumbents only as of July 1, 1989 not integrated into the standardized salary rates shall continue to be authorized.

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compensation package for GFI's employees, the recommendation to integrate into the basic pay of the Cost of Living Allowance (COLA) of ₱300.00 or 40% of basic pay, whichever is higher, similar to the Bank Equity Pay (BEP) of CB and Bank Equity Benefit Differential Pay (BEBDP) of DBP to take effect at the start of the month following approval hereof be, as it is hereby, approved, subject to clearance from the Department of Budget and Management;

RESOLVED FURTHER, That as a result of the COLA integration, the recommendation that the hiring rate will now be step 8 be, as it is hereby likewise, approved;

RESOLVED FINALLY, That the budget for the incremental cost of this integration estimated at ₱471.41 thousand per month be properly funded, chargeable against corporate funds.

[9] *Id*. at 186, 188. Pursuant to Executive Order No. 11, Series of 1989 [July 4, 1989], entitled "Implementing Guidelines on COLA Integration Approved Under Board Resolution No. '88-109."

Existing additional compensation of any national government official or employee paid from local funds of a local government unit shall be absorbed into the basic salary of said official or employee and shall be paid by the National Government. (underscoring supplied)

In compliance with the mandate contained in the SSL, DBM issued on October 2, 1989 Corporate Compensation Circular No. 10 (DBM-CCC No. 10),[10] entitled "Rules and Regulations for Implementation of the Revised Compensation and Position Classification System Prescribed under R.A. No. 6758 for Government-Owned and/or Controlled Corporations (GOCCs) and Government Financial Institutions (GFIs)."

DBM-CCC No. 10 specifically stated that the COLA and BEP granted to employees of GOCCs and GFIs shall be deemed integrated into the basic salary effective July 1, 1989.[11] Thus,

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[10] *Id*. at 143-153, 186.

[11] DBM CCC No. 10 provides in part:

4.0 The present salary of an incumbent for purposes of this circular shall refer to the sum total of annual basic salary including the allowances enumerated hereunder, being received as of June 30, 1989 and certified and authorized by the DBM.

4.1.1 Cost of Living Allowance (COLA)/Bank Equity Pay equivalent to forty percent (40%) of basic salary of ₱300.00 per month, whichever is higher.

x x x x x x x x x

4.1.3 COLA granted to GOCCs/GFIs covered by the Compensation and Position Classification Plan for the regular agencies/offices of the National Government and to GOCCs/GFIs following the Compensation and Position Classification under LOImp. No. 104/CCC No.1 and LOImp. 97/CCC No. 2, in the amount of ₱550.00 per month for those whose basic salary is ₱1,500.00 and below, and ₱500.00 for those whose monthly basic salary is ₱1,501.00 and above, granted on top of the COLA/BEP mentioned in Item 4.1.1 above;

x x x x x x x x x

4.2 Allowances enumerated above are deemed integrated into the basic salary for the position effective July 1, 1989.

x x x x x x x x x

5.6 **Payment of other allowances/fringe benefits on top of basic salary, whether in cash or in kind, not mentioned in Sub-Paragraphs 5.4 and**

in conformity with the provisions of DBM-CCC No. 10, LBP likewise integrated the BEP into the basic pay of its employees effective as of July 1, 1989.

On February 23, 1995, RA 7907 removed petitioner LBP from the coverage of the SSL.[12]

On August 12, 1998, this Court nullified DBM-CCC No. 10 in *De Jesus v. Commission on Audit*[13] for the reason that it was not published in the Official Gazette or in a newspaper of general circulation, as required by law.

The DBM remedied its circular's defect by publishing DBM-CCC No. 10 in the Official Gazette in March 1999, which was released on July 1, 1999. Hence, DBM-CCC No. 10, as published, took effect on July 16, 1999.

It appears that after the publication of the Decision in *De Jesus*, respondents started negotiating with petitioner LBP for the payment of their COLA and BEP benefits over and above their monthly basic salaries, and back payment of the same from the time that LBP stopped to extend them until the finality of the Decision in *De Jesus*.

On May 17, 2002,[14] respondents wrote then LBP President Margarito Teves appealing for the restoration of their COLA and BEP. Receiving no immediate response, respondents sent a final demand letter dated June 21, 2002 reiterating the claim for the payment of their COLA and BEP from July 1, 1989 to March 15, 1999, inclusive.[15]

Petitioner LBP, however, in a letter dated June 25, 2002 denied respondents' appeal based on a Civil Service Commission (CSC)

5.5 above shall be discontinued effective November 1, 1989. Payment made for such allowances/fringe benefits after said date shall be considered as illegal disbursement of public funds.

[12] *Rollo*, p. 186.

[13] G.R. No. 109023, August 12, 1998, 294 SCRA 152.

[14] *Rollo*, pp. 156-160.

[15] *Id.* at 194.

ruling citing DBM Budget Circular 2001-03 which prohibits the payment of COLA and similar allowances on top of the basic salary on the ground that it would constitute double compensation.[16]

Thus, on August 30, 2002, respondents instituted a Petition for *Mandamus*[17] before the RTC of Manila, Branch 40, docketed as Civil Case No. 02-104483 to compel LBP to pay their COLA and the BEP allowances over and above their basic salaries because of their alleged clear legal right to receive these allowances under LOI Nos. 104 and 116.[18]

On June 7, 2004, the trial court issued a Decision[19] in respondents' favor, granting the petition for *mandamus* and ordering LBP to pay herein respondents' claim. The decretal portion of the RTC's Decision states:

WHEREFORE, Judgment is rendered requiring respondents to pass and issue a board resolution:

1. Directing the payment of Cost of Living Allowance (COLA) in the amount of ₱300.00 or forty percent (40%) of the respective basic salaries of petitioners per month whichever is higher, effective May 16, 1989 up to the present;

2. Directing the payment of Bank Equity Pay (BEP) amounting to ₱550.00 per month for those receiving ₱1,500.00 and below as basic salary per month and ₱500.00 per month

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[16] *Id*. at 54, 194.

[17] *Id*. at 164-178.

[18] To support their claim, respondents cited the cases following cases: *Philippine Ports Authority v. Commission on Audit* (G.R. No. 100773, October 12, 1992, 214 SCRA 653); *Manila International Airport Authority v. Commission on Audit* (G.R. No. 104217, December 5, 1994, 238 SCRA 714); *Philippine International Trading Corporation v. Commission on Audit* (G.R. No. 132593, June 25, 1999, 309 SCRA 177); and *National Tobacco Administration v. Commission on Audit* (G.R. No. 119385, August 5, 1999, 311 SCRA 1999). Respondents are of the position that these cases confirm that employees of GOCCs and GFIs whose allowances were withheld pursuant to DBM-CCC No. 10 are entitled to the restoration of the same from the time their allowances were disallowed or discontinued up to fifteen (15) days from the publication of DBM-CCC No. 10 in the Official Gazette.

[19] *Rollo*, pp. 183-200.

for those receiving more than ₱1,500.00 per month from July 1, 1989 up to the present; and

3. Directing the payment of interest amounting to six percent (6%) per year on all the amounts due to petitioners effective May 16, 1989 in the case of COLA and July 1, 1989 in the case of BEP up to August 18, 1999, (the date of extra-judicial demand), and twelve (12%) from August 19, 1999 up to the present or until fully paid.[20]

When its Motion for Reconsideration[21] was denied by the court *a quo*,[22] petitioner LBP interposed an appeal with the CA,[23] the recourse docketed as CA-G.R. SP No. 99154. Petitioner LBP filed its Memorandum on June 13, 2007.[24] Respondents, on the other hand, opted to file a Motion to Dismiss Appeal[25] supposedly because LBP's resort was the wrong mode and the appeal is wanting of material dates.

Eventually, the appellate court issued a Decision dated October 11, 2010[26] affirming with modification the RTC Decision. The CA ruled, thus:

WHEREFORE, the assailed Decision dated June 7, 2004 rendered by the Regional Trial Court (RTC) of Manila (Branch 40), in Special Civil Action No. 02-104483, is hereby AFFIRMED with modification that:

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[20] *Id*. at 200.

[21] *Id*. at 211-232.

[22] *Id*. at 243-248, in its Order dated August 10, 2004.

[23] *Id*. at 251-254. As narrated by the Court of Appeals, after the RTC rendered its June 7, 2004 Decision, the court *a quo* likewise ordered its immediate execution in a Special Order dated July 22, 2005. In a Resolution dated August 11, 2005, however, the CA issued a TRO to enjoin the execution of the RTC Decision. Later, in its Decision dated September 27, 2005, the CA granted LBP's petition for *certiorari* with prayer for the issuance of a TRO and/or preliminary injunction (docketed as CA-GR SP No. 90807) and directed the RTC to refrain from implementing and enforcing its June 7, 2004 Decision and July 22, 2005 Special Order.

[24] *Id*. at 282-326.

[25] *Id*. at 274-281.

[26] *Id*. at 12-34, 101-122.

Land Bank of the Philippines is hereby DIRECTED to pay an interest of six percent (6%) per annum on all the amounts due to petitioners-appellees effective May 16, 1989, in the case of Cost of Living Allowance (COLA), and July 1, 1989, in the case of Bank Equity Pay (BEP), up to the finality of this Decision, which interest rate should become twelve percent (12%) per annum from the finality of this Decision up to its satisfaction.

In sustaining the decision of the RTC, the appellate court held that while LOI Nos. 104 and 116 mandate the payment of additional compensation, evidence shows that "the salaries of [LBP's] officers and employees before and after the alleged integration shows that the latter hardly received said financial incentives at all"[27]and that there is "an apparent diminution in the net pay [of LBP employees and officers] **even if the COLA and BEP are already incorporated therein**."[28]

The CA further stated the observation that, while DBM-CCC No. 10 expressly allowed the integration of the COLA and BEP into the basic pay, the circular cannot operate to validate the acts of petitioner LBP as the issuance was subsequently nullified for non-publication.[29]

The CA also pointed out that LBP officers and employees were already taken out of the coverage of SSL by RA 7907 on February 23, 1995, or more than four (4) years before the publication of DBM CCC No. 10; thus, the LBP officers and employees shall continue to receive their COLA and BEP on top of their basic salaries, as there has been no law that effectively repealed LOI Nos. 104 and 116.

LBP moved for, but was denied, reconsideration[30] per the CA's Resolution dated February 22, 2011.[31]

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[27] *Id*. at 25, 113.

[28] *Id*. at 26, 114; emphasis supplied.

[29] *Id*. at 28, 116.

[30] *Id*. at 327-345.

[31] *Id*. at 36-39; 125-128.

On April 15, 2011, LBP filed a Petition for Review before this Court, ascribing to the appellate court the commission of serious reversible errors. LBP argues that the integration/consolidation of COLA and BEP undertaken by LBP cannot be considered a circumvention of LOI Nos. 104 and 116 as it was validated and confirmed as a state policy under the SSL barely two months after the integration of the COLA was implemented.[32] Citing *Gutierrez v. DBM*,[33] LBP maintains that based on Section 12 of the SSL, the COLA and BEP are among those falling into the general category of allowances that shall be "deemed included" in the standardized salary rates prescribed in it.[34]

The appellate court also grievously erred, so LBP argued, in ruling that there was no law that repealed LOI Nos. 104 and 116 considering that the SSL expressly repealed the law upon which LOI Nos. 104 and 116 were made, Presidential Decree No. (PD) 985. Thus, so petitioner maintains, it is erroneous to conclude that the integration of COLA and BEP into the basic pay continues to violate the provisions of these repealed laws. Further, since the issuance of RA 7907, LBP is now allowed to draw up its own compensation plan independent of the provisions of either the SSL or LOI Nos. 104 and 116.[35]

The Court, in a minute resolution, denied the petition on July 25, 2011.[36] Hence, this Omnibus Motion.[37]

LBP specifically emphasized in its motion that LOI Nos. 104 and 116 have been repealed by the SSL and that LBP itself was excluded from the SSL's coverage even before its implementing rules were invalidated by the court. Thus, it is petitioner's position that it cannot be legally compelled to pay

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[32] *Id.* at 68.

[33] G.R. No. 153266, March 18, 2010, 616 SCRA 1.

[34] *Rollo*, pp. 69-70.

[35] *Id.* at 81-82.

[36] *Id.* at 349.

[37] *Id.* at 350-382.

the COLA and the BEP up to the present. LBP further cites *Galang v. Land Bank of the Philippines*[38] *(Galang)* where this Court supposedly recognized that the COLA had been replaced by Personnel Economic Relief Allowance (PERA), which is now extended to all LBP employees.[39] To petitioner, these are all established facts that significantly demolish the conclusion reached by the appellate court to the effect that the COLA and the BEP should be given to respondents up to the present because LOI Nos. 104 and 116 remain to be the governing laws on the matter.

On October 3, 2011, this Court received a Motion to Intervene dated September 28, 2011[40] filed by LBP employees, represented by Engr. Generoso David (David), who claim being in the same circumstance and situation as respondents in the instant case, having a claim on the same benefits as that claimed by respondents.

In a Resolution dated October 12, 2011,[41] this Court granted LBP's motion for reconsideration as incorporated in its Omnibus Motion and reinstated its basic petition. The Court likewise granted the LBP employees' Motion for Intervention and required both respondents and the intervenors led by David to file their respective comments on the Petition and the motion for reconsideration.

On November 16, 2011, respondents filed their Comments and/or Opposition to the Omnibus Motion[42] of Petitioner-Movant and the Motion to Intervene filed by David dated November 11, 2011.[43] Respondents argued the SSL has not repealed LOI

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[38] G.R. No. 175276, May 31, 2011, 649 SCRA 574.

[39] *Rollo*, pp. 366-367.

[40] *Id.* at 419-670.

[41] *Id.* at 671-672.

[42] Respondents later asserted that the Comments were directed at the "Petition" not the "Omnibus Motion"; *id.* at 751-762, 778-779.

[43] *Id.* at 673-699.

Nos. 104 and 116. Also, LBP Board Resolution '88-109, which occasioned the COLA integration, was implemented without a formal approval from the DBM, as required by LOI No. 104. Hence, the integration cannot be sustained as valid.

On January 9, 2012, another Motion for Leave to File and to Admit Complaint-In-Intervention and a Complaint-in-Intervention both dated January 3, 2012[44] were filed by Edwin Ilagan, *et al.* (Ilagan). Ilagan averred that they are incumbent and retired employees of petitioner LBP from May 16, 1989 up to the present. Thus, so they claim, they are similarly entitled to the amounts corresponding to the withheld COLA and BEP as adjudged by the RTC to private respondents.

Intervenors David, *et al.* filed their Comment on the Petition for Review on January 13, 2012.[45] In a Resolution dated February 6, 2012,[46] this Court took note of intervenor David, *et al.*'s Comments and granted Ilagan's Motion for Leave to File and to Admit Complaint-in-Intervention.

On August 22, 2012, David, *et al.* filed a Manifestation with Submission submitting that there are additional LBP employees who pray that they be considered as additional signatories to the motions for interventions already allowed and granted by the Court.[47] In a Resolution dated October 17, 2012,[48] David, *et al.*'s manifestation was granted.

On November 19, 2013, respondents then filed a Motion for Early Resolution,[49] citing *Galang* and claiming that the payment of COLA between 1990 to 1995 had already been mandated by this Court to an employee of LBP; thus, LBP's petition should accordingly be dismissed.

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[44] *Id.* at 716-731.

[45] *Id.* at 736-747.

[46] *Id.* at 748-750.

[47] *Id.* at 80-784; 792-879.

[48] *Id.* at 785-787.

[49] *Id.* at 889-907.

The Issue

Despite the convoluted claims of the parties, the basic question before us is whether or not respondents and intervenors are entitled to the COLA and the BEP on top of their basic salaries from 1989 up to the present.

The Court's Ruling

After careful re-consideration and re-evaluation of the facts and the law, we are constrained to rule in the negative.

The SSL Remained Valid Despite the Nullification of DBM-CCC No. 10

To recall, respondents' demand for the payment of their COLA and BEP on top of their basic salaries came after this Court's promulgation of *De Jesus*, which nullified DBM-CCC No. 10 for non-publication. It is their position that by the nullification of DBM-CCC No. 10 which expressly named the COLA and BEP as integrated into the basic salary, LBP's integration of the COLA and the BEP is likewise invalid. In other words, respondents equate the nullification of the implementing rules with the nullification of the very law which orders the integration of these allowances into the basic salary. This Court had already refuted the soundness of this claim.

In *Napocor Employees Consolidated Union (NECU) v. National Power Corporation*,[50] we clarified that the nullification of DBM-CCC No. 10 is irrelevant to the validity of the provisions of the SSL:

We hold that Rep. Act No. 6758 (*Compensation and Classification Act of 1989*) can be implemented notwithstanding our ruling in *De Jesus vs. Commission on Audit*. While it is true that in said case, this Court declared the nullity of DBM-CCC No. 10, yet there is nothing in our decision thereon suggesting or intimating the suspension of the effectivity of Rep. Act No. 6758 pending the publication in the Official Gazette of DBM-CCC No. 10. For sure, in *Philippine International Trading Corporation vs.*

[50] G.R. No. 157492, March 10, 2006, 484 SCRA 396.

Commission on Audit, this Court specifically ruled that the nullity of DBM-CCC No. 10 will not affect the validity of Rep. Act No. 6758. Says this Court in that case:

> x x x **The nullity of DBM-CCC No. 10, will not affect the validity of R.A. No. 6758.** It is a cardinal rule in statutory construction that statutory provisions control the rules and regulations which may be issued pursuant thereto. Such rules and regulations must be consistent with and must not defeat the purpose of the statute. **The validity of R.A. No. 6758 should not be made to depend on the validity of its implementing rules.** (Emphasis and underscoring supplied.)

Thus, in resolving the issue of whether the COLA and/or the BEP should be paid separately from the basic salary to the employees of LBP as of July 1, 1989, we should look into the very provisions of the SSL. For emphasis, Sec. 12 of the SSL is provided anew:

> Section 12. *Consolidation of Allowances and Compensation*. – **All allowances**, except for representation and transportation allowances; clothing and laundry allowances; subsistence allowance of marine officers and crew on board government vessels and hospital personnel; hazard pay; allowances of foreign service personnel stationed abroad; and such other additional compensation not otherwise specified herein as may be determined by the DBM, **shall be deemed included in the standardized salary rates herein prescribed.** Such other additional compensation, whether in cash or in kind, being received by incumbents only as of July 1, 1989 not integrated into the standardized salary rates shall continue to be authorized.
>
> Existing additional compensation of any national government official or employee paid from local funds of a local government unit shall be absorbed into the basic salary of said official or employee and shall be paid by the National Government. (underscoring supplied)

From the foregoing provision, it is immediately apparent that the SSL mandates the integration of **all allowances** except for the following:

1. Representation and transportation allowances;
2. Clothing and laundry allowances;

3. Subsistence allowance of marine officers and crew on board government vessels;
4. Subsistence allowance of hospital personnel;
5. Hazard pay;
6. Allowances of foreign service personnel stationed abroad;
7. And such other additional compensation not otherwise specified herein as may be determined by the DBM.

Since the COLA and the BEP are among those expressly excluded by the SSL from integration, they should be considered as deemed integrated in the standardized salaries of LBP employees under the general rule of integration.

In *Abellanosa v. Commission on Audit*[51] *(Abellanosa)*, the Court, confronted with the similar issue of the application of Sec. 12 of the SSL with regard to the Incentive Allowance of National Housing Authority employees, held that "**all allowances not specifically mentioned** in [Section 12 of the SSL], or as may be determined by the DBM, **shall be deemed included in the standardized salary rates prescribed**."[52]

More emphatically, the Court *En Banc* declared in *Gutierrez* that the COLA is one of those allowances deemed integrated under Sec. 12 of the SSL because (1) it had not been expressly excluded from the general rule of integration and (2) it is a benefit intended to reimburse the employee for the expenses he incurred in the performance of his official functions. We held, thus:

At the heart of the present controversy is Section 12 of R.A. 6758 which is quoted anew for clarity:

x x x x x x x x x

But, while the provision enumerated certain exclusions, it also authorized the DBM to identify such other additional compensation that may be granted over and above the standardized salary rates. In *Philippine Ports Authority Employees Hired After July 1, 1989*

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[51] G.R. No. 185806, July 24, 2012, 677 SCRA 371, 382.

[52] Emphasis supplied.

v. Commission on Audit, the Court has ruled that while Section 12 could be considered self-executing in regard to items (1) to (6), it was not so in regard to item (7). The DBM still needed to amplify item (7) since one cannot simply assume what other allowances were excluded from the standardized salary rates**. It was only upon the issuance and effectivity of the corresponding implementing rules and regulations that item (7) could be deemed legally completed**.

x x x x x x x x x

In this case, the DBM promulgated NCC 59 [and CCC 10]. But, instead of identifying some of the additional exclusions that Section 12 of R.A. 6758 permits it to make, the DBM made a list of what allowances and benefits are deemed integrated into the standardized salary rates. More specifically, NCC 59 identified the following allowances/additional compensation that are deemed integrated:

x x x x x x x x x

The drawing up of the above list is consistent with Section 12 above. R.A. 6758 did not prohibit the DBM from identifying for the purpose of implementation what fell into the class of "all allowances." With respect to what employees' benefits fell outside the term apart from those that the law specified, the DBM, said this Court in a case, needed to promulgate rules and regulations identifying those excluded benefits. This leads to the inevitable conclusion that until and unless the DBM issues such rules and regulations, the enumerated exclusions in items (1) to (6) remain exclusive. Thus so, **not being an enumerated exclusion, COLA is deemed already incorporated in the standardized salary rates of government employees under the general rule of integration.**

In any event, **the Court finds the inclusion of COLA in the standardized salary rates proper. In *National Tobacco Administration v. Commission on Audit,* the Court ruled that the enumerated fringe benefits in items (1) to (6) have one thing in common—they belong to one category of privilege called allowances which are usually granted to officials and employees of the government to defray or reimburse the expenses incurred in the performance of their official functions**. Consequently, if these allowances are consolidated with the standardized salary rates, then the government official or employee will be compelled to spend his personal funds in attending to his duties. On the other hand,

item (7) is a "catch-all proviso" for benefits in the nature of allowances similar to those enumerated.

Clearly, **COLA is not in the nature of an allowance intended to reimburse expenses incurred by officials and employees of the government in the performance of their official functions. It is not payment in consideration of the fulfillment of official duty**. As defined, cost of living refers to "the level of prices relating to a range of everyday items" or "the cost of purchasing those goods and services which are included in an accepted standard level of consumption." Based on this premise, **COLA is a benefit intended to cover increases in the cost of living. Thus, it is and should be integrated into the standardized salary rates.**

x x x x x x x x x

[T]he integration of COLA into the standardized salary rates is not dependent on the publication of CCC 10 and NCC 59. This benefit is deemed included in the standardized salary rates of government employees since it falls under the general rule of integration— "all allowances."

Under the doctrine of *stare decisis et non quieta movere*, a point of law already established will be followed by the court in subsequent cases where the same legal issue is raised.[53] Thus, we can come to no other conclusion than to deny the payment of the COLA on top of the LBP employees' basic salary from July 1, 1989 because (1) it has not been expressly excluded from the general rule on integration by the first sentence of Sec. 12 of the SSL and (2) as we have explained in *Gutierrez*, the COLA is not granted in order to reimburse employees for the expenses incurred in the performance of their official duties.

Similar to the COLA, which have been defined in *Gutierrez* as "the cost of purchasing those goods and services which are included in an accepted standard level of consumption," the BEP had been extended by the LBP pursuant to LOI 116. Significantly, LOI 116 directed the payment of a "cost of living allowance." LOI 116 pertinently provides:

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[53] *Philippine National Bank v. Palma*, G.R. No. 157279, August 9, 2005, 466 SCRA 307.

Letter of Instruction No. 116

GRANTING A COST OF LIVING ALLOWANCE
TO GOVERNMENT EMPLOYEES

WHEREAS, the energy crisis has brought about world-wide inflation and tremendously increased **cost of living** in the country;

WHEREAS, it is the policy of government to help augment government personnel income in times of economic crisis and inflation;

WHEREAS, P.D. No. 985 empowered the President to determine the compensation of government employees;

NOW THEREFORE, I, FERDINAND E. MARCOS, President of the Philippines, by virtue of the power vested in me by law, do hereby Direct and Order:

1. Each and every official/employee of the National Government, including state universities and colleges, whether permanent, temporary, emergency, contractual or casual, shall be granted **a cost of living allowance** of ₱3.35 a day or ₱100 per month in the case of daily or monthly employees, respectively.
2. Local government units may grant full or in part **the cost of living allowance authorized under this Letter** to their employees, subject to the limits of their financial position and under such conditions as may be determined by the Joint Commission on Local Government Personnel Administration.
3. The Compensation Committee created by P.D. No. 985 for government owned or controlled corporation shall immediately meet and determine compensation increases for their respective groups. No government owned or controlled corporations may authorize and implement any increase in salary/allowances/ benefits without the approval of the Compensation Committee concerned. The following guidelines shall be observed by the Committees in their work:
    a. The **cost of living allowance directed by this Letter** for national government employees may be authorized for employees of government owned or controlled corporations;
    b. **In lieu of the cost of living allowance** and where corporate finances permit, the Compensation Committee may instead adopt measures for compensation increase that are consistent with and do not exceed the limits

agreed upon for private enterprises in the 1980 Tri-Sectoral Meeting;

x x x x x x x x x

5. Payment of half of the **living allowance** herein directed shall be made effective February 1, 1980 and the other half, effective August 1, 1980.[54]

It is more than reasonable to infer that the BEP is in fact an additional COLA extended to LBP employees under LOI 116. Thus, similar to the COLA, the payment of the BEP separately from the basic salary from July 1, 1989 cannot be allowed because (1) it has not been expressly excluded from the general rule on integration by the first sentence of Sec. 12 of the SSL and (2) it has not been granted to reimburse LBP employees for the expenses incurred in the performance of their official duties.

The LOIs Extending the COLA and BEP Do Not Prohibit Integration

It is argued, however, that this Court should heed the ruling of the appellate court which ordered the payment of the COLA and the BEP pursuant to the LOIs mandating their payment.

A closer look of these LOIs, however, would argue against the idea that they prohibit the integration of either allowance into the basic pay of GFI employees. Nowhere in either issuances is it mandated that these allowances can only be paid on top of, and separate from, the basic and net pay of the employees of GFIs. In other words, LOI Nos. 104 and 116 are not controlling in the **manner** of the payment of these allowances to the employees.

Even assuming *arguendo* that these LOIs proscribe the integration of these allowances into the basic pay, this proscription has been effectively repealed by the SSL which provides in its Sec. 16, *viz*:

Section 16. ***Repeal of Special Salary Laws and Regulations***.— All laws, decrees, executive orders, corporate charters, and other issuances or parts thereof, that exempt agencies from the coverage

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[54] *Rollo*, pp. 133-134.

of the System, or that authorize and fix position classification, salaries, pay rates or allowances of specified positions, or groups of officials and employees or of agencies, which are consistent with the System, including the proviso under Section 2, and Section 16 of Presidential Decree No. 985 are hereby repealed.

Clearly, among the laws specifically repealed by SSL is the proviso under Sec. 2 of PD 985,[55] which reads:

> x x x Provided, that notwithstanding a standardized salary system established for all employees, **additional financial incentives may be established by government corporations and financial institutions for their employees to be supported fully from their corporate funds** and for such technical positions as may be approved by the President in critical government agencies. (emphasis supplied)

As both LOI Nos. 104 and 116 have been promulgated under authority of Sec. 2, PD 985,[56] any mandate arguably contained in the LOIs regarding the manner of payment of the COLA and/or the BEP had been effectively revoked by the SSL.[57]

Parenthetically, even before the effectivity of the SSL, the allowances given to GOCCs had already been tempered by Memorandum Order (MO) No. 177, Series of 1998, issued by then President Corazon Aquino in May 31, 1988, which stated:

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[55] See *Tejada v. Domingo*, G.R. No. 91860 January 13, 1992, 205 SCRA 138.

[56] The Whereas Clauses of LOI No. 104 state:

"WHEREAS, pursuant to the mandate of the Constitution, Presidential Decree No. 985 was issued to standardize compensation of government officials and employees, including those in government-owned or controlled corporations, taking into account the nature of the responsibilities pertaining thereto, and the qualifications required for the positions concerned;

WHEREAS, the said Decree authorize the adoption of additional financial incentives for viable and profit-making corporations and those performing critical functions, to be supported from the net earnings and profits of such corporations."

Similarly, the 3rd Whereas Clause of LOI No. 116 provides: "WHEREAS, P.D. No. 985 empowered the President to determine the compensation of government employees."

[57] In fact, the allowances given to GOCCs and GFIs had already been tempered.

SECTION 1. Coverage. – This [MO] shall cover profit-making and financially viable [GOCCs] which are not receiving subsidies for any operating expenses from the National Government.

SECTION 2. Allowances of Incumbents. – Incumbents of positions in corporate entities covered by this [MO] who are presently receiving additional monthly compensation/fringe benefits and other emoluments x x x shall continue to receive such excess allowance, which shall be referred to as "transition allowance". **The "transition allowance" shall be correspondingly reduced by the amount of any salary increase or salary adjustment that the incumbent shall receive in the future**.

x x x x x x x x x

SECTION 3. Compliance with Legal Requirements. – **All government-owned or controlled corporations are henceforth required to comply strictly with the laws, rules and regulations governing the grant of salary increases, allowances and other benefits to their officials and employees**. The head of the corporation shall be held responsible for any unauthorized grant without prejudice to requiring the refund by the employees concerned. (emphasis supplied)

Thus, respondents and intervenors' claim that they have a vested right over the payment of the COLA and the BEP on top of the monthly basic salary is unfounded. Lest it be forgotten, the rule is that the payment of a salary may be amended by the power which granted it in the first place.[58]

LBP Now Has the Autonomy to Design its Compensation Plan

Respondents and intervenors' reliance on RA 7907 to support their claimed entitlement to COLA and BEP on top of their basic salaries is, furthermore, misplaced. The law that exempted petitioner LBP from the coverage of the SSL does not retroactively obliterate the integration rule laid down in the SSL. Neither did RA 7907 order the separation of the COLA and the BEP from the basic monthly.

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[58] See Cruz, Carlo L., *THE LAW OF PUBLIC OFFICERS* 146 (2003); citing Mechem, *A Treatise on the Law of Public Offices and Officers*, Chapter I, Section 856.

Sec. 10 of RA 7907 simply reads as follows:

Sec. 10. Section 90 of the same Act is hereby amended to read as follows:

x x x x x x x x x

"All positions in the Bank shall be governed by a compensation, position classification system and qualification, standards approved by the Bank's Board of Directors based on a comprehensive job analysis and audit of actual duties and responsibilities. The compensation loan shall be comparable with the prevailing compensation plans in the private sector and shall be subjected to periodic review by the Board no more than once every two (2) years without prejudices to yearly merit reviews or increases based on productivity and profitability. **The bank shall therefore be exempt from existing laws, rules and regulations on compensation, position classification and qualification standards. It shall however endeavor to make its system conform as closely as possible with the principle under Republic Act No. 6758**." (emphasis supplied)

It is at once apparent from the quoted provision that, by RA 7907, petitioner LBP had been given sufficient independence and autonomy to design its own compensation plan, *i.e.*, to decide whether to integrate the COLA and the BEP into the basic pay. This Court cannot dictate the inclusion of the COLA and BEP contrary to the sound business judgment of LBP recognized and sustained in RA 7907.

In other words, after RA 7907 became effective, it is with more reason that petitioner LBP cannot be ordered to pay the COLA and the BEP on top of the basic salary. Thus, even if we were constrained to rule that the COLA and BEP are not governed by the general integration rule of the SSL, it is still grievous error to order the payment of these allowances until the publication and effectivity of DBM-CCC No. 10, or worse, until the settlement of this controversy.[59]

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[59] In fact, after this Court's promulgation of *De Jesus*, DBM itself, in its Budget Circular 2001-03 dated November 12, 2001, had reaffirmed the fact of consolidation of the COLA and similar allowances in the basic salaries of GFI employees, as mandated by Section 12 of the SSL. To

The Fact of Integration Has Not Been Questioned

What is more significant is that respondents and intervenors have not questioned the fact of integration. Similarly, the appellate court found there was in fact an integration of the subject allowances to the basic pay of the employees of LBP, albeit supposedly insufficient. The observation of the appellate court regarding the resulting amount notwithstanding, the actual integration of these allowances to the basic salary of the respondents and the intervenors defeats the allegation of a total deprivation and/or withholding of these allowances. As such, to order the payment of the COLA and the BEP on top of what has already been paid by LBP—the basic pay with the COLA and the BEP incorporated—will constitute a prohibited double compensation.

In *PNB v. Palma*,[60] this Court once again reiterated the established rule that "[u]nder Section 12 of RA 6758 (the SSL), additional compensation already being received by the employees of petitioner, **but not integrated in the standardized salary rates** – enumerated in Section 5.5 of DBM-CC No. 10, like 'rice subsidy, sugar subsidy, death benefits, other than those granted by the GSIS,' and so on – shall continue to be given."[61] Since, COLA and the similar allowance of BEP had been considered integrated into the basic salary of the employees under Sec. 12, and had in fact been integrated into the basic salary of LBP employees, there is nothing to justify a redundant back payment of these allowances.

In fact, in *Gutierrez* previously alluded to, one of the reasons given by this Court in denying petitioners' claim for payment of COLA was that "the integration was not by mere legal fiction since it was factually integrated into the employee's salaries

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order the payment of the COLA and BEP on top of the basic salary, even if warranted, should not have been allowed beyond the effectivity of DBM-CCC No. 10.

[60] G.R. No. 157279, August 9, 2005, 466 SCRA 307.

[61] *Id*. at 326.

x x x there is thus nothing in these cases which can be the subject of a back pay since the amount corresponding to COLA was never withheld from the petitioners in the first place."[62]

Galang is Not Determinative of the *Manner* of the Payment of COLA

It has been raised that in *Galang v. Land Bank of the Philippines*, this Court allowed the back payment of COLA to an LBP employee. Hence, it is presently asserted that, in consonance with the equal protection of the laws, a similar ruling be made in this case.

A reliance on *Galang*, however, is off course. One of the issues in *Galang* relates to the entitlement of Galang, who was irregularly dismissed in 1990, to the back salaries of Personnel Economic Relief Allowance (PERA). As to the period of his entitlement to back salaries, the Court held that:

> [T]he five-year period covered in the computation of Galang's back salaries and other benefits is from July 1990 to June 1995. Also, he shall receive back salaries and other benefits for the period during which he should have been reinstated from October 1, 1997 to August 15, 2001.

In resolving the issue regarding Galang's entitlement to PERA, this Court observed:

> On the other hand, x x x (PERA) is a 500 monthly allowance authorized under the pertinent general provision in the annual GAA. It is granted to augment the pay of government employees due to the rising cost of living.
>
> On February 12, 1997, Congress enacted R.A. No. 8250 (GAA for CY 1997), which granted PERA to all government employees and officials as a replacement of the Cost of Living Allowance (COLA). This explains why Land Bank employees began receiving **PERA** only in 1997—because **prior to 1997**, said benefit **was called by another name, COLA**. Hence, Land Bank is still liable to pay the monthly PERA to Galang. (emphasis supplied)

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[62] *Gutierrez v. DBM*, *supra* note 33, at 24.

In the dispositive portion of *Galang*, this Court thus ordered:

> WHEREFORE, the Decision dated May 25, 2006 and Resolution dated October 25, 2006 of the Court of Appeals in CA-G.R. SP No. 91910 are AFFIRMED WITH MODIFICATIONS. Land Bank of the Philippines is ordered to pay Isabelo L. Galang: (a) back salaries for five (5) years from the time of his unlawful dismissal in July 1990 to June 1995 at the rate last received by him without qualification and deduction; (b) back salaries from the proper date of his reinstatement on October 1, 1997 until August 15, 2001, at the rate prevailing on October 1, 1997 inclusive of increases in salary; (c) **Cost of Living Allowance (COLA) from July 1990 to June 1995; (d) Personnel Economic Relief Allowance (PERA) from October 1, 1997 to August 15, 2001** x x x.

A careful reading of the foregoing discussion will reveal that there is nothing therein that mandates the payment of the COLA as a separate item from the basic salary of LBP employees. In fact, there is no discussion in the body of our ruling in *Galang* regarding the invalidity of integration of the COLA and the BEP. At most, the portion in the *fallo* regarding the payment of the COLA from 1990 to 1995 to Galang was merely to put emphasis to the fact that he was entitled to the allowance he was totally deprived of.

The ruling in *Galang*, to stress, was never meant to resolve the issue as to the validity of the integration of the COLA and the BEP into the basic salaries of LBP employees. The integration was never put in issue in that case. Hence, the back payment of the COLA as integrated in the basic salaries from 1990 to 1995 is justified as sufficient compliance to our Order contained in the *fallo*, as worded.

Contrary to the position taken by respondents and intervenors, our discussion in *Galang* even further disproves the entitlement of LBP employees to COLA up until the finality of the resolution of the case. As we discussed therein, the COLA had long been replaced by PERA such that there may not even be a need for the payment as integrated of the COLA after its replacement.

WHEREFORE, the instant petition is **GRANTED** and the Decision dated October 11, 2010 and the Resolution dated

February 22, 2011 of the Court of Appeals in CA-G.R. SP No. 99154, which ordered the back payment of the Cost of Living Allowance (COLA) and the Bank Equity Pay (BEP) to respondents, are hereby **REVERSED** and **SET ASIDE**.

The Motion for Intervention filed by David, *et al.* and the Complaint-In-Intervention filed by Ilagan, *et al.* are **DENIED**.

SO ORDERED.

Peralta, Abad, Mendoza, and *Leonen, JJ.,* concur.

THIRD DIVISION

[G.R. No. 197561. April 7, 2014]

COCA-COLA BOTTLERS PHILIPPINES, INC., *petitioner, vs.* **CITY OF MANILA; LIBERTY M. TOLEDO, in her capacity as Officer-in-Charge (OIC), Treasurer of the City of Manila; JOSEPH SANTIAGO, in his capacity as OIC, Chief License Division of the City of Manila; REYNALDO MONTALBO, in his capacity as City Auditor of the City of Manila,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; JUDGMENTS; EXECUTION OF JUDGMENT; A MOTION FOR ISSUANCE OF A WRIT OF EXECUTION IS NOT NECESSARY WHERE THE REMEDY HAS ALREADY BEEN PROVIDED BY LAW.— In its Decision dated September 28, 2001, the RTC-Manila directs respondents to either refund or credit the tax under Section 21 of the Revenue Code of Manila, which was improperly assessed but nevertheless paid for by petitioner on the first quarter of year 2000 in the amount of ₱3,036,887.33. The judgment does not actually involve a monetary award or a

settlement of claim against the government. Under the first option, any tax on income that is paid in excess of the amount due the government may be refunded, provided that a taxpayer properly applies for the refund. On the other hand, the second option works by applying the refundable amount against the tax liabilities of the petitioner in the succeeding taxable years. Hence, instead of moving for the issuance of a writ of execution relative to the aforesaid Decision, petitioner should have merely requested for the approval of the City of Manila in implementing the tax refund or tax credit, whichever is appropriate. In other words, no writ was necessary to cause the execution thereof, since the implementation of the tax refund will effectively be a return of funds by the City of Manila in favor of petitioner while a tax credit will merely serve as a deduction of petitioner's tax liabilities in the future. In fact, Section 252 (c) of the Local Government Code of the Philippines is very clear that "[i]n the event that the protest is finally decided in favor of the taxpayer, the amount or portion of the tax protested shall be refunded to the protestant, or applied as tax credit against his existing or future tax liability." It was not necessary for petitioner to move for the issuance of the writ of execution because the remedy has already been provided by law.

2. ID.; ID.; ID.; THE ISSUANCE OF THE WRIT OF EXECUTION IS CONSIDERED SUPERFLUOUS BECAUSE THE JUDGMENT OF THE REGIONAL TRIAL COURT OF MANILA CAN NEITHER BE CONSIDERED A JUDGMENT FOR A SPECIFIC SUM OF MONEY SUSCEPTIBLE OF EXECUTION BY LEVY OR GARNISHMENT NOR A SPECIAL JUDGMENT.— [U]nder Administrative Order No. 270 prescribing rules and regulations implementing the Local Government Code, particularly Article 286 thereof, the tax credit granted a taxpayer shall be applied to future tax obligations of the same taxpayer for the same business x x x. Accordingly, while we find merit in petitioner's contention that there are two (2) ways by which respondents may satisfy the judgment of the RTC-Manila: (1) to pay the petitioner the amount of Php 3,036,887.33 as tax refund; or (2) to issue a tax credit certificate in the same amount which may be credited by petitioner from its future tax liabilities due to the respondent City of Manila, the issuance of the Writ of Execution relative thereto was superfluous, because the judgment of the RTC-Manila can neither be considered a

judgment for a specific sum of money susceptible of execution by levy or garnishment under Section 9, Rule 39 of the Rules of Court nor a special judgment under Section 11, Rule 39 thereof.

3. POLITICAL LAW; ADMINISTRATIVE LAW; LOCAL TAXATION; THE GOVERNMENT AUDITING CODE OF THE PHILIPPINES (P.D. NO. 1445) AND ADMINISTRATIVE CIRCULAR NO. 10-2000 ARE NOT APPLICABLE WHERE NO MONETARY AWARD IS ACTUALLY AWARDED TO THE PARTY BUT A MERE RETURN OR RESTORATION OF ITS MONEY, ARISING FROM AN EXCESSIVE PAYMENT OF TAX ERRONEOUSLY OR ILLEGALLY IMPOSED AND RECEIVED.— [G]iven that Presidential Decree No. 1445 and Administrative Circular No. 10-2000 involve a settlement of a claim against a local government unit, the same finds no application in the instant case wherein no monetary award is actually awarded to petitioner but a mere return or restoration of petitioner's money, arising from an excessive payment of tax erroneously or illegally imposed and received.

4. ID.; ID.; ID.; THE CITY OF MANILA LOCAL TREASURY MAY BE ALLOWED TO VERIFY DOCUMENTS AND INFORMATION RELATIVE TO THE TAX REFUND OR TAX CREDIT TO DETERMINE THE CORRECTNESS THEREOF.— It could not have been the intention of the law to burden the taxpayer with going through the process of execution under the Rules of Civil Procedure before it may allowed to avail its tax credit as affirmed by a court judgment. If at all, the City of Manila Local Treasury may be allowed to verify documents and information relative to the grant of the tax refund or tax credit (*i.e.*, determine the correctness of the petitioner's returns, and the tax amount to be credited), in consonance with the ruling in *San Carlos Milling Co., Inc. v. Commissioner of Internal Revenue*, which may be applied by analogy to the case at bar, to wit: It is difficult to see by what process of ratiocination petitioner insists on the literal interpretation of the word "automatic." Such literal interpretation has been discussed and precluded by the respondent court in its decision of 23 December 1991 where, as aforestated, it ruled that "once a taxpayer opts for either a refund or the automatic tax credit scheme, and signified his option in accordance with the regulation, this does not *ipso facto* confer on him the right to avail of the same immediately. An investigation, as a matter

of procedure, is necessary to enable the *Commissioner* to *determine the correctness of the petitioner's returns, and the tax amount to be credited.*

5. REMEDIAL LAW; JUDGMENTS; EXECUTION OF JUDGMENT; THE LOWER COURT ORDERED THE QUASHING OF THE WRIT OF EXECUTION TO ALLOW THE PARTIES TO ENFORCE THE JUDGMENT BY COMPLYING FIRST WITH THE REQUIREMENTS SET BY LAW FOR A TAX REFUND OR TAX CREDIT, BUT NOT TO REVERSE THE FINDING OF THE VALIDITY OF THE TAX REFUND OR THE TAX CREDIT DUE TO THE PETITIONER. — [T]his Court disagrees with petitioner's ***fifth*** contention that the assailed decision of the RTC-Manila granting the Motion to Quash the Writ of Execution has, in effect, reversed the judgment in the instant case. What is at issue in the instant petition is merely the propriety of the enforcement of the writ of execution issued by the RTC-Manila. Clearly, this Court has already ruled upon the validity of the tax refund or the tax credit due to the petitioner and has rendered the same final and executor. The lower court, therefore, has not effectively reversed the judgment in favor of petitioner. The court *a quo*'s reason for quashing the Writ of Execution was to allow the parties to enforce the judgment by complying first with the rules and procedures of P.D. No. 1445 and Administrative Circular No. 10-2000.

APPEARANCES OF COUNSEL

A.M. Sison, Jr. & Partners for petitioner.
Office of the City Legal Officer of Manila for respondents.

D E C I S I O N

PERALTA, *J.*:

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court seeking to reverse and set aside the Orders[1] dated December 22, 2010 and June 21, 2011,

[1] Penned by Judge Amor A. Reyes; Annexes "A" and "B" to Petition, respectively, *rollo*, pp. 24-25.

respectively, of the Regional Trial Court of Manila (*RTC-Manila*) in Civil Case No. 00-97081.

The factual and procedural antecedents follow:

This case springs from the Decision[2] rendered by the RTC-Manila, dated September 28, 2001, in the case entitled *Coca-Cola Bottlers Philippines, Inc. v. City of Manila, et al.*, docketed as Civil Case No. 00-97081, granting petitioner's request for tax refund or credit assessed under Section 21[3] of the Revenue Code of Manila upon finding that there was double taxation in the imposition of local business taxes. The dispositive portion of said Decision reads:

WHEREFORE, premises considered, judgment is hereby rendered ordering defendants to either refund or credit the tax assessed under

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[2] Annex "C" to Petition, *id*. at 26-30.

[3] Section 21. – *Tax on Businesses Subject to the Excise, Value-Added or Percentage Taxes under the NIRC*.– On any of the following businesses and articles of commerce subject to excise, value-added or percentage taxes under the National Internal Revenue Code hereinafter referred to as NIRC, as amended, a tax of FIFTY PERCENT (50%) of ONE PERCENT (1%) per annum on the gross sales or receipts of the preceding calendar year is hereby imposed:

(A) On persons who sell goods and services in the course of trade or business; and those who import goods whether for business or otherwise; as provided for in Sections 100 to 103 of the NIRC as administered and determined by the Bureau of Internal Revenue pursuant to the pertinent provisions of the said Code.

x x x x x x x x x

(D) Excisable goods subject to VAT

(1) Distilled spirits

(2) Wines

x x x x x x x x x

(8) Coal and coke

(9) Fermented liquor, brewers' wholesale price, excluding the *ad valorem* tax

x x x x x x x x x

PROVIDED, that all registered businesses in the City of Manila that are already paying the aforementioned tax shall be exempted from payment thereof.

Section 21 of the Revenue Code of Manila and paid for by plaintiff on the first quarter of year 2000 in the amount of ₱3,036,887.33.

The defendants City of Manila, *etc*. are enjoined from collecting the tax from plaintiff Coca-Cola Bottlers Phils., Inc. under Section 21 of the Revenue Code of Manila. The counterclaims [sic] of respondents is hereby DENIED for lack of merit.

Accordingly, the Injunction bond posted by petitioner is hereby CANCELLED.

SO ORDERED.[4]

Aggrieved by the foregoing, respondents herein appealed to the Court of Appeals *via* an ordinary appeal.[5] On April 9, 2003, the Court of Appeals issued a Resolution dismissing respondents' appeal on the ground that the same was improperly brought to the said Court pursuant to Section 2, Rule 50 of the Revised Rules of Court. Despite respondents' motion for reconsideration, the Court of Appeals affirmed its decision in its Resolution dated February 28, 2005.[6]

On February 10, 2010, this Court promulgated a Resolution denying the Petition for Review filed by the respondents, the dispositive portion of which reads:

WHEREFORE, the Court DENIES the petition. The Court AFFIRMS the 09 April 2003 and 28 February 2005 Resolutions of the Court of Appeals in CA-G.R. CV No. 74517.

SO ORDERED.[7]

On May 12, 2010, the Clerk of Court of this Court issued an Entry of Judgment[8] relative to the aforesaid Resolution and declared the same final and executory on March 10, 2010.

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[4] *Rollo*, p. 30.

[5] *Id.* at 6.

[6] *Id.* at 6-7.

[7] *Id.* at 31.

[8] Annex "D" to Petition, *id*. at 31-32.

On June 3, 2010, petitioner filed with the RTC-Manila a Motion for Execution for the enforcement of the Decision dated September 28, 2001 and the issuance of the corresponding writ of execution.[9] Finding merit therein, on June 11, 2010, the RTC-Manila issued an Order[10] granting petitioner's Motion for Execution and directed the Branch Clerk of Court to issue the corresponding writ of execution to satisfy the judgment.

On June 15, 2010, the Branch Clerk of Court, Branch 21 of the RTC-Manila issued a Writ of Execution directing the Sheriff to cause the execution of the Decision dated September 28, 2001, disposing as follows:

> **NOW THEREFORE**, you are hereby commanded to cause the execution of the aforesaid judgment, including payment in full of your lawful fees for the service of this writ.[11]

Aggrieved, respondents filed a Motion to Quash Writ of Execution. In response, petitioner filed its Opposition thereto on December 12, 2010.[12]

On December 22, 2010, the RTC-Manila issued an Order[13] granting the Motion to Quash Writ of Execution, ruling:

> Finding the motion to be prejudicial to the defendants, if implemented, and considering that the projects of the City will be hampered, the same is hereby GRANTED.
>
> WHEREFORE, premises considered, the Motion to Quash the Writ of Execution is hereby GRANTED.
>
> SO ORDERED.[14]

Herein petitioner filed a Motion for Reconsideration, but the same was denied by the RTC-Manila in its Order dated June

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[9] *Rollo*, p. 7.

[10] Annex "E" to Petition, *id*. at 33.

[11] Annex "F" to Petition, *id*. at 34. (Emphasis in the original)

[12] *Rollo*, p. 8.

[13] Annex "A" to Petition, *id*. at 24.

[14] *Id*.

21, 2011, reasoning that both tax refund and tax credit involve public funds. Thus, pursuant to SC Administrative Circular No. 10-2000,[15] the enforcement or satisfaction of the assailed

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[15] The pertinent provision of Administrative Circular No. 10-2000 provides that:

In order to prevent possible circumvention of the rules and procedures of the Commission on Audit, judges are hereby enjoined to observe utmost caution, prudence and judiciousness in the issuance of writs of execution to satisfy money judgments against government agencies and local government units.

Judges should bear in mind that in *Commissioner of Public Highways v. San Diego (31 SCRA 617, 625 [1970]*), this Court explicitly stated:

> The universal rule that where the State gives its consent to be sued by private parties either by general or special law, it may limit claimant's action "only up to the completion of proceedings anterior to the stage of execution" and that the power of the Court ends when the judgment is rendered, since government funds and properties may not be seized under writs of execution or garnishment to satisfy such judgments, is based on obvious considerations of public policy. Disbursements of public funds must be covered by the corresponding appropriation as required by law. The functions and public services rendered by the State cannot be allowed to be paralyzed or disrupted by the diversion of public funds from their legitimate and specific objects, as appropriated by law.
>
> Moreover, it is settled jurisprudence that upon determination of State liability, the prosecution, enforcement or satisfaction thereof must still be pursued in accordance with the rules and procedures laid down in P.D. No. 1445, otherwise known as the Government Auditing Code of the Philippines (*Department of Agriculture v. NLRC, 227 SCRA 693, 701-02 [1993]* citing *Republic vs. Villasor, 54 SCRA 84 [1973]*). All money claims against the Government must first be filed with the Commission on Audit which must act upon it within sixty days. Rejection of the claim will authorize the claimant to elevate the matter to the Supreme Court on *certiorari* and, in effect, sue the State thereby (P.D. 1445, Sections 49-50).
>
> However, notwithstanding the rule that government properties are not subject to levy and execution unless otherwise provided for by statute (*Republic v. Palacio, 23 SCRA 899 [1968]; Commissioner of Public Highways v. San Diego, supra*) or municipal ordinance (*Municipality of Makati v. Court of Appeals, 190 SCRA 206 [1990]*), the Court has, in various instances, distinguished between government funds and properties for public use and those not held for public

decision may still be pursued in accordance with the rules and procedures laid down in Presidential Decree (*P.D.*) No. 1445, otherwise known as the Government Auditing Code of the Philippines.[16]

Hence, the present Petition for Review on *Certiorari* raising the following assignment of errors:

1. THE HONORABLE COURT *A QUO* SERIOUSLY ERRED WHEN IT FAILED TO CONSIDER THAT THE WRIT OF EXECUTION (FOR SPECIAL JUDGMENT) ISSUED BY THE BRANCH CLERK OF COURT DOES NOT INVOLVE THE LEVY OR GARNISHMENT OF FUNDS AND PROPERTY USED OR BEING USED FOR PUBLIC PURPOSE, ADMINISTRATIVE CIRCULAR NO. 10-2000 HAS THEREFORE NO RELEVANCE IN THIS CASE.
2. THE HONORABLE COURT *A QUO* SERIOUSLY ERRED WHEN IT FAILED TO CONSIDER THAT THE

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use. Thus, in *Viuda de Tan Toco v. Municipal Council of Iloilo (49 Phil. 52 [1926]*), the Court ruled that "[w]here property of a municipal or other public corporation is sought to be subjected to execution to satisfy judgments recovered against such corporation, the question as to whether such property is leviable or not is to be determined by the usage and purposes for which it is held." The following can be culled from *Viuda de Tan Toco v. Municipal Council of Iloilo*:

> 1. Properties held for public uses – and generally everything held for governmental purposes – are not subject to levy and sale under execution against such corporation. The same rule applies to funds in the hands of a public officer and taxes due to a municipal corporation.
>
> 2. Where a municipal corporation owns in its proprietary capacity, as distinguished from its public or governmental capacity, property not used or used for a public purpose but for quasi-private purposes, it is the general rule that such property may be seized and sold under execution against the corporation.
>
> 3. Property held for public purposes is not subject to execution merely because it is temporarily used for private purposes. If the public use is wholly abandoned, such property becomes subject to execution.

[16] Annex "B" to Petition, *rollo*, p. 25.

JUDGMENT IN THIS CASE REQUIRES EITHER TAX REFUND (PAYMENT OF SUM OF MONEY) OR TAX CREDIT (ISSUANCE OF TAX CREDIT CERTIFICATE).

3. THE HONORABLE COURT *A QUO* SERIOUSLY ERRED WHEN IT FAILED TO CONSIDER THAT THE DEFENDANTS HAVE BEEN ISSUING TAX CREDIT CERTIFICATES TO OTHER TAXPAYERS FOR ILLEGALLY COLLECTED TAXES EVEN WITHOUT ANY APPROPRIATE MEASURE.

4. THE HONORABLE COURT *A QUO* SERIOUSLY ERRED WHEN IT FAILED TO CONSIDER THAT THE REASON CITED IN THE ORDER IN QUASHING THE WRIT OF EXECUTION IS NOT ONE OF THE GROUNDS LAID DOWN BY LAW. (*GUTIERREZ VS. VALIENTE*, 557 SCRA 211)

5. THE HONORABLE COURT *A QUO* SERIOUSLY ERRED WHEN IT FAILED TO CONSIDER THAT ITS ASSAILED ORDER HAS IN EFFECT REVERSED THE JUDGMENT IN THIS CASE, THUS, DEPRIVING PETITIONER THE FRUITS OF ITS LABOR BEFORE THE COURTS.[17]

At the onset, it bears stressing that while petitioner lays down various grounds for the allowance of the petition, the controversy boils down to the propriety of the issuance of the writ of execution of the judgment ordering respondents either to refund or credit the tax assessed under Section 21[18] of the Revenue Code of Manila in the amount of Php3,036,887.33.

After careful consideration of the facts and laws obtaining in this case, we find that the issuance of the Writ of Execution was superfluous, given the clear directive of the RTC-Manila in its Decision dated September 28, 2001. We do not, however, agree with respondents' view that Administrative Circular No. 10-2000 is applicable to the instant case for reasons discussed hereinbelow.

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[17] *Rollo*, pp. 8-9. (Underscoring and emphasis omitted).

[18] *Supra* note 2.

In its ***first*** assigned error, petitioner argues that the writ of execution issued by the Branch Clerk of Court does not involve the levy or garnishment of funds and property used or being used for public purpose given that the writ was issued "For: Special Judgment." Thus, Administrative Circular No. 10-2000 has no relevance in the instant case.

In its Decision dated September 28, 2001, the RTC-Manila directs respondents to either refund or credit the tax under Section 21 of the Revenue Code of Manila, which was improperly assessed but nevertheless paid for by petitioner on the first quarter of year 2000 in the amount of ₱3,036,887.33. The judgment does not actually involve a monetary award or a settlement of claim against the government.

Under the first option, any tax on income that is paid in excess of the amount due the government may be refunded, provided that a taxpayer properly applies for the refund.[19] On the other hand, the second option works by applying the refundable amount against the tax liabilities of the petitioner in the succeeding taxable years.[20]

Hence, instead of moving for the issuance of a writ of execution relative to the aforesaid Decision, petitioner should have merely requested for the approval of the City of Manila in implementing the tax refund or tax credit, whichever is appropriate. In other words, no writ was necessary to cause the execution thereof, since the implementation of the tax refund will effectively be a return of funds by the City of Manila in favor of petitioner while a tax credit will merely serve as a deduction of petitioner's tax liabilities in the future.

In fact, Section 252 (c) of the Local Government Code of the Philippines is very clear that "[i]n the event that the protest is finally decided in favor of the taxpayer, the amount or portion of the tax protested shall be refunded to the protestant, or applied

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[19] *Philam Asset Management, Inc. v. Commissioner of Internal Revenue*, 514 Phil. 147, 157 (2005).

[20] *Id.*

as tax credit against his existing or future tax liability." It was not necessary for petitioner to move for the issuance of the writ of execution because the remedy has already been provided by law.

Thus, under Administrative Order No. 270 prescribing rules and regulations implementing the Local Government Code, particularly Section 286 thereof, the tax credit granted a taxpayer shall be applied to future tax obligations of the same taxpayer for the same business, to wit:

> ARTICLE 286. *Claim for Refund or Tax Credit*. — All taxpayers entitled to a refund or tax credit provided in this Rule shall file with the local treasurer a claim in writing duly supported by evidence of payment (*e.g.*, official receipts, tax clearance, and ***such other proof evidencing overpayment)*** within two (2) years from payment of the tax, fee, or charge. No case or proceeding shall be entertained in any court without this claim in writing, and after the expiration of two (2) years from the date of payment of such tax, fee, or charge, or from the date the taxpayer is entitled to a refund or tax credit.
>
> ***The tax credit granted a taxpayer shall not be refundable in cash but shall only be applied to future tax obligations of the same taxpayer for the same business***. If a taxpayer has paid in full the tax due for the entire year and he shall have no other tax obligation payable to the LGU concerned during the year, his tax credits, if any, shall be applied in full during the first quarter of the next calendar year on the tax due from him for the same business of said calendar year.
>
> Any unapplied balance of the tax credit shall be refunded in cash in the event that he terminates operation of the business involved within the locality.[21]

Accordingly, while we find merit in petitioner's contention that there are two (2) ways by which respondents may satisfy the judgment of the RTC-Manila: (1) to pay the petitioner the amount of Php3,036,887.33 as tax refund; or (2) to issue a tax credit certificate in the same amount which may be credited by petitioner from its future tax liabilities due to the respondent City

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[21] Emphasis supplied.

of Manila,[22] the issuance of the Writ of Execution relative thereto was superfluous, because the judgment of the RTC-Manila can neither be considered a judgment for a specific sum of money susceptible of execution by levy or garnishment under Section 9,[23]

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[22] *Rollo*, p. 13.

[23] Sec. 9. *Execution of judgments for money, how enforced.* –

(a) *Immediate payment on demand.* – The officer shall enforce an execution of a judgment for money by demanding from the judgment obligor the immediate payment of the full amount stated in the writ of execution and all lawful fees. The judgment obligor shall pay in cash, certified bank check payable to the judgment obligee, or any other form of payment acceptable to the latter, the amount of the judgment debt under proper receipt directly to the judgment obligee or his authorized representative if present at the time of payment. The lawful fees shall be handed under proper receipt to the executing sheriff who shall turn over the said amount within the same day to the clerk of court of the court that issued the writ.

If the judgment obligee or his authorized representative is not present to receive payment, the judgment obligor shall deliver the aforesaid payment to the executing sheriff. The latter shall turn over all the amounts coming into his possesssion within the same day to the clerk of court of the court that issued the writ, or if the same is not practicable, deposit said amounts to a fiduciary account in the nearest government depository bank of the Regional Trial Court of the locality.

The clerk of court shall thereafter arrange for the remittance of the deposit to the account of the court that issued the writ whose clerk of court shall then deliver said payment to the judgment obligee in satisfaction of the judgment. The excess, if any, shall be delivered to the judgment obligor while the lawful fees shall be retained by the clerk of court for disposition as provided by law. In no case shall the executing sheriff demand that any payment by check be made payable to him.

(b) *Satisfaction by levy*. – If the judgment obligor cannot pay all or part of the obligation in cash, certified bank check or other mode of payment acceptable to the judgment obligee, the officer shall levy upon the properties of the judgment obligor of every kind and nature whatsoever which may be disposed of for value and not otherwise exempt from execution giving the latter the option to immediately choose which property or part thereof may be levied upon, sufficient to satisfy the judgment. If the judgment obligor does not exercise the option, the officer shall first levy on the personal properties, if any, and then on the real properties if the personal properties are insufficient to answer for the judgment.

The sheriff shall sell only a sufficient portion of the personal or real property of the judgment obligor which has been levied upon.

Rule 39 of the Rules of Court nor a special judgment under Section 11,[24] Rule 39 thereof.

Moreover, given that Presidential Decree No. 1445 and Administrative Circular No. 10-2000 involve a settlement of a

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When there is more property of the judgment obligor than is sufficient to satisfy the judgment and lawful fees, he must sell only so much of the personal or real property as is sufficient to satisfy the judgment and lawful fees.

Real property, stocks, shares, debts, credits, and other personal property, or any interest in either real or personal property, may be levied upon in like manner and with life effect as under a writ of attachment.

(c) *Garnishment of debts and credits*. – The officer may levy on debts due the judgment obligor and other credits, including bank deposits, financial interests, royalties, commissions and other personal property not capable of manual delivery in the possession or control of third parties. Levy shal be made by serving notice upon the person owing such debts or having in his possession or control such credits to which the judgment obligor is entitled. The garnishment shall cover only such amount as will satisfy the judgment and all lawful fees.

The garnishee shall make a written report to the court within five (5) days from service of the notice of garnishment stating whether or not the judgment obligor has sufficient funds or credits to satifsfy the amount of the judgment. If not, the report shall state how much funds or credits the garnishee holds for the judgment obligor. The garnished amount in cash, or certified bank check issued in the name of the judgment obligee, shall be delivered directly to the judgment obligee within ten (10) days from service of notice on said garnishing requiring such delivery, except the lawful fees which shall be paid directly to the court.

In the event there are two or more garnishees holding deposits or credits sufficient to satisfy the judgment, the judgment obligor, if available, shall have the right to indicate the garnishee or garnishees who shall be required to deliver the amount due; otherwise, the choice shall be made by the judgment obligee.

The executing sheriff shall observe the same procedure under paragraph (a) with respect to delivery of payment to the judgment obligee.

[24] Section 11. *Execution of special judgments*. – When a judgment requires the performance of any act other than those mentioned in the two preceding sections, a certified copy of the judgment shall be attached to the writ of execution and shall be served by the officer upon the party against whom the same is rendered, or upon any other person required thereby, or by law, to obey the same, and such party or person may be punished for contempt if he disobeys such judgment.

claim against a local government unit, the same finds no application in the instant case wherein no monetary award is actually awarded to petitioner but a mere return or restoration of petitioner's money, arising from an excessive payment of tax erroneously or illegally imposed and received.

It could not have been the intention of the law to burden the taxpayer with going through the process of execution under the Rules of Civil Procedure before it may be allowed to avail its tax credit as affirmed by a court judgment. If at all, the City of Manila Local Treasury may be allowed to verify documents and information relative to the grant of the tax refund or tax credit (*i.e.*, determine the correctness of the petitioner's returns, and the tax amount to be credited), in consonance with the ruling in *San Carlos Milling Co., Inc. v. Commissioner of Internal Revenue*,[25] which may be applied by analogy to the case at bar, to wit:

> It is difficult to see by what process of ratiocination petitioner insists on the literal interpretation of the word "automatic." Such literal interpretation has been discussed and precluded by the respondent court in its decision of 23 December 1991 where, as aforestated, it ruled that "once a taxpayer opts for either a refund or the automatic tax credit scheme, and signified his option in accordance with the regulation, this does not *ipso facto* confer on him the right to avail of the same immediately. An investigation, as a matter of procedure, is necessary to enable the ***Commissioner*** to ***determine the correctness of the petitioner's returns, and the tax amount to be credited***.
>
> Prior approval by the Commissioner of Internal Revenue of the tax credit under then Section 86 (now Section 69) of the Tax Code would appear to be the most reasonable interpretation to be given to said section. ***An opportunity must be given the internal revenue branch of the government to investigate and confirm the veracity of the claims of the taxpayer***. The absolute freedom that petitioner seeks to automatically credit tax payments against tax liabilities for a succeeding taxable year, can easily give rise to confusion and abuse, depriving the government of authority and control over the

[25] G.R. No. 103379, November 23, 1993, 228 SCRA 135.

manner by which the taxpayers credit and offset their tax liabilities, not to mention the resultant loss of revenue to the government under such a scheme.[26]

In its ***third*** assignment of error, petitioner postulates that the RTC-Manila seriously erred when it failed to consider that the respondents have been issuing tax credit certificates to other taxpayers for illegally collected taxes even without any appropriate measure.

On the other hand, respondents argue that the same raises a question of fact which would entail an examination of probative value of documentary evidence which, in fact, were not introduced in the course of the trial but only as a mere attachment to the Motion for Reconsideration of petitioner.[27]

Petitioner's sweeping statement cannot hold water as the factual and legal milieu of the tax refund cases submitted to the City of Manila, as well as the circumstances availing in each of those cases, vary, requiring a different action from the City of Manila. As such, the case of *Asian Terminals Inc.* as well as the case of *Tupperware Brands Phils., Inc.* and *Smart Communications, Inc.*, as cited by petitioner,[28] should not be compared to the instant case because it has not been proven that the factual and procedural circumstances availing therein are similar to the instant case.

For its ***fourth*** assigned error, petitioner argues that the reason cited in the Order quashing the Writ of Execution is not one of the grounds laid down by law.

Respondents aver, on the other hand, that in granting the Motion to Quash, the RTC-Manila plainly conceded that the Writ of Execution was improvidently issued as it was prejudicial to the respondents. Respondents also argue that the rule that

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[26] *San Carlos Milling Co., Inc. v. Commissioner of Internal Revenue, supra*, at 140-141. (Emphasis in the original)

[27] Comment dated February 20, 2012, *rollo*, p. 73.

[28] *Rollo*, pp. 14-15.

government funds are generally exempt from execution is based on obvious considerations of public policy; thus, the primary functions and devolved public welfare services rendered by the respondent City of Manila cannot be interrupted or abandoned by the withdrawal of its meager resources from their lawful and particular purpose based on the appropriation ordinance.[29]

Finding that the issuance of the Writ of Execution was superfluous in the first place, this Court finds the foregoing issue inapt for discussion. Nevertheless, this Court disagrees with petitioner's ***fifth*** contention that the assailed decision of the RTC-Manila granting the Motion to Quash the Writ of Execution has, in effect, reversed the judgment in the instant case.

What is at issue in the instant petition is merely the propriety of the enforcement of the writ of execution issued by the RTC-Manila. Clearly, this Court has already ruled upon the validity of the tax refund or the tax credit due to the petitioner and has rendered the same final and executory.

The lower court, therefore, has not effectively reversed the judgment in favor of petitioner. The court *a quo*'s reason for quashing the Writ of Execution was to allow the parties to enforce the judgment by complying first with the rules and procedures of P.D. No. 1445 and Administrative Circular No. 10-2000.[30]

WHEREFORE, premises considered, the petition is **GRANTED**. Accordingly, petitioner Coca-Cola Bottlers, Inc. is entitled to a tax refund or tax credit without need for a writ of execution, provided that petitioner complies with the requirements set by law for a tax refund or tax credit, whichever is applicable.

SO ORDERED.

Velasco, Jr. (Chairperson), Abad, Mendoza, and *Leonen, JJ.,* concur.

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[29] *Id.* at 74.

[30] *Supra* note 15.

THIRD DIVISION

[G.R. No. 198022. April 7, 2014]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **SONNY GATARIN *y* CABALLERO @ "JAY-R" and EDUARDO QUISAYAS,** *accused,* **EDUARDO QUISAYAS,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; ROBBERY WITH HOMICIDE; ELEMENTS.— To sustain a conviction for robbery with homicide, the prosecution must prove the following elements: (1) the taking of personal property belonging to another; (2) with intent to gain; (3) with the use of violence or intimidation against a person; and (4) on the occasion or by reason of the robbery, the crime of homicide, as used in the generic sense, was committed.

2. ID.; ID.; TO EXIST, IT MUST BE ESTABLISHED THAT A ROBBERY HAS ACTUALLY TAKEN PLACE AND THAT, AS A CONSEQUENCE OR ON THE OCCASION OF ROBBERY, A HOMICIDE BE COMMITTED.— [I]n order to sustain a conviction for the crime of robbery with homicide, it is necessary that the robbery itself be proven as conclusively as any other essential element of the crime. In order for the crime of robbery with homicide to exist, it must be established that a robbery has actually taken place and that, as a consequence or on the occasion of robbery, a homicide be committed. For there to be robbery, there must be taking of personal property belonging to another, with intent to gain, by means of violence against or intimidation of any person or by using force upon on things. Both the RTC and the CA concluded that robbery was committed based on the testimonies of Maria Castillo, SPO3 Mendoza, and PO1 Coronel. A closer look at the testimonies of these witnesses, however, failed to convince us that indeed robbery took place.

3. ID.; ID.; TO PROVE THE ROBBERY ASPECT THEREOF, THE ELEMENT OF TAKING, AS WELL AS THE EXISTENCE OF THE MONEY ALLEGED TO HAVE

BEEN LOST AND STOLEN BY ACCUSED, MUST BE ADEQUATELY ESTABLISHED.— [T]he evidence presented to prove the robbery aspect of the special complex crime of robbery with homicide, does not show that robbery actually took place. The prosecution did not convincingly establish the *corpus delicti* of the crime of robbery. *Corpus delicti* has been defined as the body or substance of the crime and, in its primary sense, refers to the fact that a crime has actually been committed. As applied to a particular offense, it means the actual commission by someone of the particular crime charged. In this case, the element of taking, as well as the existence of the money alleged to have been lost and stolen by appellant, was not adequately established. We find no sufficient evidence to show either the amount of money stolen, or if any amount was in fact stolen from Januario. Even if we consider Januario's dying declaration, the same pertains only to the stabbing incident and not to the alleged robbery.

4. ID.; ID.; IT IS NOT ENOUGH TO SUPPOSE THAT THE PURPOSE OF THE AUTHOR OF THE HOMICIDE WAS TO ROB; A CONVICTION REQUIRES CERTITUDE THAT THE ROBBERY IS THE MAIN PURPOSE AND OBJECTIVE OF THE MALEFACTOR, AND THE KILLING, REGARDLESS OF THE TIME IT IS ACTUALLY CARRIED OUT, IS MERELY INCIDENTAL TO THE ROBBERY.— [A]ssuming that robbery was indeed committed, the prosecution must establish with certitude that the killing was a mere incident to the robbery, the latter being the perpetrator's main purpose and objective. It is not enough to suppose that the purpose of the author of the homicide was to rob; a mere presumption of such fact is not sufficient. Stated in a different manner, a conviction requires certitude that the robbery is the main purpose, and objective of the malefactor and the killing is merely incidental to the robbery. The intent to rob must precede the taking of human life but the killing may occur before, during or after the robbery. What is crucial for a conviction for the crime of robbery with homicide is for the prosecution to firmly establish the offender's intent to take personal property before the killing, regardless of the time when the homicide is actually carried out. In this case, there was no showing of the appellant's intention, determined by their acts prior to, contemporaneous with, and subsequent to

the commission of the crime, to commit robbery. No shred of evidence is on record that could support the conclusion that appellant's primary motive was to rob Januario and that he was able to accomplish it. Mere speculation and probabilities cannot substitute for proof required in establishing the guilt of an accused beyond reasonable doubt.

5. ID.; ID.; WHERE THE EVIDENCE DOES NOT CONCLUSIVELY PROVE ROBBERY, THE KILLING WOULD BE CLASSIFIED EITHER AS A SIMPLE HOMICIDE OR MURDER.— Where the evidence does not conclusively prove the robbery, the killing of Januario would be classified either as a simple homicide or murder, depending upon the absence or presence of any qualifying circumstance, and not the crime of robbery with homicide.

6. REMEDIAL LAW; EVIDENCE; ADMISSIBILITY; EXCEPTION TO THE HEARSAY RULE; DYING DECLARATION; REQUISITES TO BE ADMISSIBLE.— A dying declaration, although generally inadmissible as evidence due to its hearsay character, may nonetheless be admitted when the following requisites concur, namely: (a) the declaration concerns the cause and the surrounding circumstances of the declarant's death; (b) it is made when death appears to be imminent and the declarant is under a consciousness of impending death; (c) the declarant would have been competent to testify had he or she survived; and (d) the dying declaration is offered in a case in which the subject of inquiry involves the declarant's death.

7. ID.; ID.; ID.; ID.; ID.; IT IS THE FIXED BELIEF IN INEVITABLE AND IMMINENT DEATH AND NOT THE RAPID SUCCESSION OF DEATH IN POINT OF FACT WHICH RENDERS A DYING DECLARATION ADMISSIBLE.— In the case at bar, it appears that not all the requisites of a dying declaration are present. From the records, no questions relative to the second requisite was propounded to Januario. It does not appear that the declarant was under the consciousness of his impending death when he made the statements. The rule is that, in order to make a dying declaration admissible, a fixed belief in inevitable and imminent death must be entered by the declarant. It is the belief in impending death and not the rapid succession of death in point

of fact that renders a dying declaration admissible. The test is whether the declarant has abandoned all hopes of survival and looked on death as certainly impending. Thus, the utterances made by Januario could not be considered as a dying declaration.

8. ID.; ID.; ID.; ID.; *RES GESTAE;* THE REQUISITE FOR ADMISSIBILITY OF A DECLARATION AS PART OF THE *RES GESTAE* IS WHETHER THE ACT, DECLARATION, OR EXCLAMATION, IS SO INTERWOVEN OR CONNECTED WITH THE PRINCIPAL FACT OR EVENT THAT IT CHARACTERIZES AS TO BE REGARDED AS A PART OF THE TRANSACTION ITSELF, AND ALSO WHETHER IT CLEARLY NEGATES ANY PREMEDITATION OR PURPOSE TO MANUFACTURE TESTIMONY.— [E]ven if Januario's utterances could not be appreciated as a dying declaration, his statements may still be appreciated as part of the *res gestae*. *Res gestae* refers to the circumstances, facts, and declarations that grow out of the main fact and serve to illustrate its character and are so spontaneous and contemporaneous with the main fact as to exclude the idea of deliberation and fabrication. The test of admissibility of evidence as a part of the *res gestae* is, therefore, whether the act, declaration, or exclamation, is so interwoven or connected with the principal fact or event that it characterizes as to be regarded as a part of the transaction itself, and also whether it clearly negates any premeditation or purpose to manufacture testimony. The requisites for admissibility of a declaration as part of the *res gestae* concur herein.

9. CRIMINAL LAW; QUALIFYING CIRCUMSTANCES; ABUSE OF SUPERIOR STRENGTH; WHEN APPRECIATED AGAINST THE ACCUSED; THE ATTENDANCE OF ABUSE OF SUPERIOR STRENGTH IN THE COMMISSION OF THE OFFENSE QUALIFIES THE KILLING TO MURDER.— From the evidence presented, we find that as alleged in the information, abuse of superior strength attended the commission of the crime, and thus, qualifies the offense to murder. Abuse of superior strength is considered whenever there is a notorious inequality of forces between the victim and the aggressor, assessing a superiority of strength notoriously advantageous for the aggressor which

the latter selected or took advantage of in the commission of the crime. From the testimony of the eyewitness and corroborated by the medical certificate of Dr. Rasa, it can be inferred that indeed the qualifying circumstance of abuse of superior strength attended the commission of the crime. To be sure, with two assailants younger than the victim, armed with a bladed weapon and inflicting multiple mortal wounds on the victim, there is definitely abuse of superior strength deliberately taken advantage of by appellant and his co-accused in order to consummate the offense.

10. ID.; MURDER; PENALTY OF *RECLUSION PERPETUA* IMPOSED; CIVIL LIABILITIES OF ACCUSED-APPELLANT.— There being neither mitigating nor aggravating circumstances, appellant shall be meted the penalty of *reclusion perpetua*. Finally, the award of damages. In murder, the grant of civil indemnity which has been fixed by jurisprudence at ₱50,000.00 requires no proof other than the fact of death as a result of the crime and proof of the accused's responsibility therefor. Moral damages, on the other hand, which in this case is also ₱50,000.00 are awarded in view of the violent death of the victim. Moreover, exemplary damages in the amount of ₱30,000.00 should likewise be given, considering that the offense was attended by an aggravating circumstance whether ordinary, or qualifying as in this case. As duly proven by Maria Castillo, actual damages representing the hospital and funeral expenses, as evidenced by receipts in the amount of ₱35,300.00, be awarded. Finally, in addition and in conformity with current policy, we also impose on all the monetary awards for damages an interest at the legal rate of six percent (6%) from date of finality of this decision until full payment.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

D E C I S I O N

PERALTA, *J.*:

Assailed in this appeal is the Court of Appeals (*CA*) Decision[1] dated February 23, 2011 in CA-G.R. CR H.C. No. 03593 affirming the Regional Trial Court (*RTC*)[2] Decision[3] dated June 20, 2008 in Criminal Case No. 13838 convicting appellant Eduardo Quisayas of *Robbery with Homicide* committed against the victim Januario Castillo *y* Masangcay (*Januario*).

The facts of the case follow:

Appellant and accused Sonny Gatarin *y* Caballero were charged in an Information[4] with *Robbery with Homicide* committed as follows:

That on or about the 3rd day of November, 2004, at about 8:00 o'clock (*sic*) in the evening, at Barangay Poblacion, Municipality of Mabini, Province of Batangas, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, armed with a bladed weapon, conspiring and confederating together, acting in common accord and mutually helping each other, with intent to gain, without the knowledge and consent of the owner thereof and with violence against or intimidation of person, did then and there willfully, unlawfully and feloniously take, rob, and carry away cash money amounting to Twenty Thousand Pesos (₱20,000.00), Philippine Currency, belonging to Januario Castillo *y* Masangcay *alias* "Ka Maning," to the damage and prejudice of the latter in the aforementioned amount and that on the occasion and by reason of said robbery, the said accused with intent to kill and taking advantage of their superior strength, did then and there willfully, unlawfully and feloniously attack, assault and stab with the said weapon Januario Castillo *y* Masangcay *alias* "Ka Maning," thereby inflicting upon

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[1] Penned by Associate Justice Stephen C. Cruz, with Associate Justices Isaias P. Dicdican and Rodil V. Zalameda, concurring; *rollo*, pp. 2-14.

[2] Branch 3, Pallocan West, Batangas City.

[3] Penned by Judge Ruben A. Galvez, CA *rollo*, pp. 5-11.

[4] Records, pp. 2-3.

the latter the stab wounds to [the] anterior chest and right shoulder and right axilla, which directly caused his death.

Contrary to law.[5]

Appellant was arrested, while his co-accused remained at-large. When arraigned, he pleaded "Not Guilty." Trial on the merits thereafter ensued.

The prosecution presented the testimonies of the following witnesses: (1) Maria Castillo, the victim's wife; (2) Howel Umali (*Umali*), who allegedly saw how the accused mauled the victim; (3) SPO3 Gregorio G. Mendoza (*SPO3 Mendoza*) of the Mabini Police Station, who saw the victim lying on the floor and the accused running away from the crime scene, and testified on the dying declaration of Januario; (4) Dr. Catalino Ike A. Rasa Jr. (*Dr. Rasa*), who attended to the victim when he was brought to the hospital; and (5) PO1 Rogelio Dizon Coronel (*PO1 Coronel*), who saw the accused running fast near the crime scene and who, likewise, testified on Januario's *ante mortem* statement.

From the testimonies of the above-named witnesses, the prosecution established the following facts:

On November 3, 2004, at 8 o'clock in the evening, Umali was riding a bicycle on his way home when he saw Januario being mauled by two persons opposite Dom's Studio in Poblacion, Mabini, Batangas. Upon seeing the incident, he stayed in front of the church until such time that the accused ran away and were chased by policemen who alighted from the police patrol vehicle.[6]

On the same night, SPO3 Mendoza and PO1 Coronel were on board their patrol vehicle performing their routine patrol duty when they met two men, later identified as the accused, who were running at a fast speed. When asked why they were running, the accused did not answer prompting the policemen

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[5] *Id*.

[6] TSN, February 20, 2006, pp. 5-7.

to chase them. The policemen, however, were unsuccessful in catching them and when it became evident that they could no longer find them, they continued patrolling the area. There they saw Januario lying on the street in front of Dom's studio. As he was severely injured, the policemen immediately boarded Januario to the patrol vehicle and brought him to the Zigzag Hospital. While inside the vehicle, SPO3 Mendoza asked Januario who hurt him. He answered that it was "Jay-R and his uncle" who stabbed him. The uncle turned out to be the appellant herein, while Jay-R is his co-accused who remains at-large.[7]

At the Zigzag Hospital, Januario was attended to by Dr. Rasa who found him in critical condition. Three fatal wounds caused by a bladed weapon were found in Januario's body which eventually caused his death.[8]

Maria Castillo, for her part, testified on how she learned of what happened to her husband, the victim herein, the amount allegedly stolen from her husband, as well as on the expenses and loss incurred by reason of Januario's death. She, further, quantified the sorrow and anxiety the family suffered by reason of such death.[9]

In his defense, appellant denied the accusation against him. He claimed that he is from the Province of Samar but has been residing in Cupang, Muntinlupa City since 1987. He denied knowing, much more residing in, Mabini, Batangas, as he only heard about the province from his employer who happens to be a resident therein. He claimed that he did not know Januario and that he was, in fact, working in Muntinlupa City on the date and time the crime was allegedly committed.[10]

The prosecution's rebuttal witness Mr. Bienvenido Caponpon, however, belied appellant's claim and insisted that appellant

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[7] *Rollo*, p. 5.

[8] *Id*.

[9] CA *rollo*, p. 6.

[10] TSN, November 27, 2007, pp. 1-13.

was renting a house in Mabini, Batangas and that he was seen there until the day the crime was committed.[11]

On June 20, 2008, the RTC rendered a Decision against the appellant, the dispositive portion of which reads:

> WHEREFORE, the People having proven the guilt of accused Eduardo Quisayas beyond reasonable doubt, he is hereby declared "GUILTY" of the offense as charged. Accordingly, he is hereby sentenced to a prison term of *Reclusion Perpetua*.
>
> Further, he is hereby ordered to pay herein offended party of the following:
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> (a) civil indemnity in the amount of Php50,000.00
> (b) actual damages in the amount of Php20,000.00, plus Php35,310.00 (funeral and hospital expenses), and
> (c) moral damages in the amount of Php100,000.00
>
> SO ORDERED.[12]

The trial court gave credence to the testimony of Maria Castillo not only as to the fact of taking money from Januario but also the amount taken.[13] The fact of death was, likewise, found by the court to have been adequately proven by the testimony of Dr. Rasa.[14] Though there was no evidence whether the unlawful taking preceded the killing of Januario, the court held that there was direct and intimate connection between the two acts.[15]

As to the identity of the perpetrators, the court considered the victim's response to SPO3 Mendoza's question as to who committed the crime against him as part of the *res gestae*, which is an exception to the hearsay rule.[16] As to appellant's defense

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[11] TSN, January 31, 2008, pp. 1-14.

[12] Records, pp. 187-188.

[13] *Id.* at 185-186.

[14] *Id*. at 186.

[15] *Id*.

[16] *Id*.

of alibi, the court gave more weight to the prosecution's rebuttal evidence that indeed the former was an actual resident of Mabini, Batangas.[17]

On appeal, the CA affirmed the RTC decision. Contrary, however, to the RTC's conclusion, the appellate court considered Januario's statement to SPO3 Mendoza, that the accused were the ones who stabbed him and took his wallet, not only as part of *res gestae* but also as a dying declaration.[18]

Hence, the appeal before the Court.

We find appellant guilty beyond reasonable doubt not of robbery with homicide but of murder.

The trial court's factual findings, including its assessment of the credibility of the witnesses, the probative weight of their testimonies, and the conclusions drawn from the factual findings are accorded great respect and even conclusive effect. We, nevertheless, fully scrutinize the records, since the penalty of *reclusion perpetua* that the CA imposed on appellant demands no less than this kind of careful and deliberate consideration.[19]

To sustain a conviction for robbery with homicide, the prosecution must prove the following elements: (1) the taking of personal property belonging to another; (2) with intent to gain; (3) with the use of violence or intimidation against a person; and (4) on the occasion or by reason of the robbery, the crime of homicide, as used in the generic sense, was committed.[20]

First, in order to sustain a conviction for the crime of robbery with homicide, it is necessary that the robbery itself be proven

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[17] *Id*. at 187.

[18] *Rollo*, p. 8.

[19] *People v. Algarme*, G.R. No. 175978, February 12, 2009, 578 SCRA 601, 613.

[20] *Id*. at 621; *People v. Latam*, G.R. No. 192789, March 23, 2011, 646 SCRA 406, 410; *People v. Baron*, G.R. No. 185209, June 28, 2010, 621 SCRA 646, 656.

as conclusively as any other essential element of the crime.[21] In order for the crime of robbery with homicide to exist, it must be established that a robbery has actually taken place and that, as a consequence or on the occasion of robbery, a homicide be committed.[22]

For there to be robbery, there must be taking of personal property belonging to another, with intent to gain, by means of violence against or intimidation of any person or by using force upon on things.[23] Both the RTC and the CA concluded that robbery was committed based on the testimonies of Maria Castillo, SPO3 Mendoza, and PO1 Coronel. A closer look at the testimonies of these witnesses, however, failed to convince us that indeed robbery took place.

Maria Castillo's testimony was offered by the prosecution to prove that her husband, the victim herein, was a victim of robbery with homicide and that he is a businessman, and that she suffered damages by reason of such death. The pertinent portion of her direct testimony is quoted below for a closer scrutiny:

ATTY. MASANGYA:
Q The victim in this case Januario Castillo, how are you related to him?

WITNESS:
A My husband, sir.

Q On November 3, 2004, do you remember of any unusual incident that has occurred?

A Yes, sir.

Q And what is that event?

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[21] *People v. Orias*, G.R. No. 186539, June 29, 2010, 622 SCRA 417, 430.

[22] *People v. Abundo*, 402 Phil. 616, 635-636 (2001), citing *People v. Pacala*, 58 Phil. 370, 377-378 (1974); *People v. Arondain*, 418 Phil. 354, 367 (2001)

[23] *People v. Obedo*, 451 Phil. 529, 538 (2003).

A At around 8:30 o'clock in the evening of November 3, 2004 while I was at home, policemen arrived and informed me that my husband was wounded, sir.

Q Did these police officers inform you the location (*sic*) of where your husband was located?

A According to the policemen, my husband was at Zigzag Hospital, sir.

Q Did you go to Zigzag Hospital, Madam Witness?

A Yes, sir.

Q What happened, Madam Witness, when you arrived at the hospital?

A I was informed by the nurse there that my husband was already dead.

ATTY. MASANGYA:
Q Were you informed of the cause of the death of your husband?

WITNESS:
A According to them my husband was wounded, many wounds and he was robbed, sir.

Q Madam Witness, were you able to know who are the persons responsible for the death of your husband?

ATTY. EBORA:
We will object. That will be misleading.

COURT:
If she is aware.

ATTY. EBORA:
We submit.

COURT:
You ask her if she is aware who the perpetrators are.

ATTY. MASANGYA:
Q Madam Witness, were you informed who are the perpetrators of the crime on your husband?

WITNESS:
A Not yet, sir. It was not told to me by the policemen because the policemen were in a hurry.

ATTY. MASANGYA:
Q After the policemen went to your house, was there [any] person who informed you who were the perpetrators of the crime?

A Yes, sir. My niece.

Q And who is that niece of yours, Madam Witness?

A Josephine Borbon, sir.

Q Did Miss Borbon tell you about the identity of the perpetrators of the crime, Madam Witness?

A Yes, sir.

Q And who are the persons did Miss Borbon mention?

A My former helper Sonny Gatarin and his uncle Eduardo Quisayas, sir.

Q You were told that your husband was robbed, how much was taken from your husband, Madam Witness?

A ₱20,000.00.

Q And can you tell, Madam Witness, why is your husband carrying that amount of money at the time of his death?

A Yes, sir.

WITNESS:
A Those were the earnings for that day for he delivered merchandise and groceries, sir.

ATTY. MASANGYA:
Q Do you know, Madam Witness, if your husband is engaged in any business?

A Yes, sir.

Q And what is your proof in saying your husband is engaged in business?

A Our business was we delivered bottled goods and groceries, sir.

Q The business wherein your husband is engaged has an existing license with the appropriate local government?

A Yes, sir.

Q If a copy will be shown to you, will you be able to identify the same?

A Yes, sir.

Q I am showing to you [a] certified copy of [the] Mayor's permit previously marked as Exhibit "H"?

A This is it, sir.

Q If you know, Madam Witness, how much is your husband earning in his *sari-sari* or grocery business?

WITNESS:
A Yes, sir.

ATTY. MASANGYA:
Q How much is he earning at the time?

A He earns ₱40,000.00.

Q In a month or year?

A ₱40,000.00 a month, sir.

Q How do you feel or confront the situation that your husband is already dead?

A We felt deep sorrow together with my three (3) children, sir. (Witness is crying)

x x x x x x x x x[24]

From the above testimony, it can be inferred that Maria Castillo obviously was not at the scene of the crime on that fateful night as she was only informed that the incident took place and that Januario was brought to the Zigzag Hospital. It, likewise, appears that she had no personal knowledge that Januario was robbed. While she claimed that ₱20,000.00 was illegally taken from him, no evidence was presented to show that Januario indeed had that amount at that time and that the same was in his possession. As Maria Castillo claimed that the said amount was allegedly received from their clients in their grocery business, said fact could have been proven by receipts or testimonies of

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[24] TSN, November 24, 2005, pp. 3-8.

said clients. The prosecution's failure to present such evidence creates doubt as to the existence of the money.

The trial and appellate courts likewise relied on the testimony of SPO3 Mendoza and PO1 Coronel on the statement of Januario after the commission of the crime. While both policemen testified as to the dying declaration of Januario pertaining to the cause and circumstances surrounding his death, only PO1 Coronel testified during his direct examination that when asked who stabbed him, Januario replied that it was "Jay-Ar and his uncle who stabbed him and took his wallet."[25] In response to the Presiding Judge's clarificatory question, however, PO1 Coronel admitted that when he asked Januario who stabbed him, he replied that it was Jay-Ar and his uncle. After which, no further question was asked.[26] On the other hand, nowhere in SPO3 Mendoza's testimony did he talk about the alleged taking of wallet. The pertinent portions of their testimonies read:

Direct Examination of PO1 Coronel:

x x x x x x x x x

Q: What did you do next after boarding him inside your vehicle?
A We brought him at the Zigzag Hospital and we asked him who stabbed him.

Q What was his reply Mr. Witness?
A He told us that Jay-ar and his uncle stabbed him and took his wallet.

x x x x x x x x x[27]

PO1 Coronel's Answers to the questions propounded by the Presiding Judge:

THE COURT:
Alright, the Court will ask.

Q When did you talk with the victim?
A When we were inside the patrol car, your Honor.

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[25] TSN, July 10, 2007, p. 8.

[26] *Id*. at 20.

[27] *Id*. at 8.

Q What exactly did you ask from the victim?
A I asked him who stabbed him, your Honor.

Q Did you tell the victim his condition?
A No, your Honor.

Q You just asked the victim who stabbeb him?
A Yes, your Honor.

Q What was the answer of the victim?
A That he was stabbed by Jay-ar and his uncle, your Honor.

Q And no other question did you ask him?
A None, your Honor.

x x x x x x x x x[28]

Direct Testimony of SPO3 Mendoza:

x x x x x x x x x

Q And when you saw Januario Castillo lying on the street, what did you do?
A We lifted him and boarded him in our vehicle then we brought him to the hospital.

Q While you were travelling, were you able to talk to the victim Januario Castillo?
A Yes, sir.

Q What was your conversation all about?
A I asked Ka Maning Castillo as to who stabbed him and he answered Jay-R and his uncle.

x x x x x x x x x[29]

It is, therefore, clear from the foregoing that the evidence presented to prove the robbery aspect of the special complex crime of robbery with homicide, does not show that robbery actually took place. The prosecution did not convincingly establish the *corpus delicti* of the crime of robbery. *Corpus delicti* has been defined as the body or substance of the crime and, in its

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[28] *Id.* at 20.

[29] TSN, May 30, 2006, pp. 6-7.

primary sense, refers to the fact that a crime has actually been committed. As applied to a particular offense, it means the actual commission by someone of the particular crime charged.[30] In this case, the element of taking, as well as the existence of the money alleged to have been lost and stolen by appellant, was not adequately established.[31] We find no sufficient evidence to show either the amount of money stolen, or if any amount was in fact stolen from Januario. Even if we consider Januario's dying declaration, the same pertains only to the stabbing incident and not to the alleged robbery.

Moreover, assuming that robbery was indeed committed, the prosecution must establish with certitude that the killing was a mere incident to the robbery, the latter being the perpetrator's main purpose and objective. It is not enough to suppose that the purpose of the author of the homicide was to rob; a mere presumption of such fact is not sufficient.[32] Stated in a different manner, a conviction requires certitude that the robbery is the main purpose, and objective of the malefactor and the killing is merely incidental to the robbery. The intent to rob must precede the taking of human life but the killing may occur before, during or after the robbery.[33] What is crucial for a conviction for the crime of robbery with homicide is for the prosecution to firmly establish the offender's intent to take personal property before the killing, regardless of the time when the homicide is actually carried out.[34] In this case, there was no showing of the appellant's intention, determined by their acts prior to, contemporaneous with, and subsequent to the commission of the crime, to commit robbery.[35] No shred of evidence is on record that could support the conclusion that appellant's primary motive was to rob Januario

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[30] *People v. Obedo*, *supra* note 23, at 538-539.

[31] *Id*. at 539.

[32] *People v. Algarme*, *supra* note 19, at 625.

[33] *Id*. at 621; *People v. Latam*, *supra* note 20, at 410;

[34] *People v. Canlas*, 423 Phil. 665, 684 (2001).

[35] See *People v. Algarme*, *supra* note 19, at 625-626.

and that he was able to accomplish it.[36] Mere speculation and probabilities cannot substitute for proof required in establishing the guilt of an accused beyond reasonable doubt.[37]

Where the evidence does not conclusively prove the robbery, the killing of Januario would be classified either as a simple homicide or murder, depending upon the absence or presence of any qualifying circumstance, and not the crime of robbery with homicide.[38]

To establish the fact that appellant and his co-accused killed the victim by stabbing him with a bladed weapon, the prosecution presented Umali as an eyewitness to the mauling incident. It was this same witness who identified the perpetrators. The trial and appellate courts also relied on the statement of Januario as to the circumstances of his death, testified to by PO1 Coronel and SPO3 Mendoza as dying declaration and as part of *res gestae*.

A dying declaration, although generally inadmissible as evidence due to its hearsay character, may nonetheless be admitted when the following requisites concur, namely: (a) the declaration concerns the cause and the surrounding circumstances of the declarant's death; (b) it is made when death appears to be imminent and the declarant is under a consciousness of impending death; (c) the declarant would have been competent to testify had he or she survived; and (d) the dying declaration is offered in a case in which the subject of inquiry involves the declarant's death.[39]

In the case at bar, it appears that not all the requisites of a dying declaration are present. From the records, no questions relative to the second requisite was propounded to Januario. It

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[36] *People v. Canlas*, *supra* note 34.

[37] *People v. Canlas*, *supra* note 34, at 684-685.

[38] *People v. Orias*, *supra* note 21.

[39] *People v. Rarugal*, G.R. No. 188603, January 16, 2013, 688 SCRA 646, 654; *People v. Maglian*, G.R. No. 189834, March 30, 2011, 646 SCRA 770, 778.

does not appear that the declarant was under the consciousness of his impending death when he made the statements. The rule is that, in order to make a dying declaration admissible, a fixed belief in inevitable and imminent death must be entered by the declarant. It is the belief in impending death and not the rapid succession of death in point of fact that renders a dying declaration admissible. The test is whether the declarant has abandoned all hopes of survival and looked on death as certainly impending.[40] Thus, the utterances made by Januario could not be considered as a dying declaration.

However, even if Januario's utterances could not be appreciated as a dying declaration, his statements may still be appreciated as part of the *res gestae*. *Res gestae* refers to the circumstances, facts, and declarations that grow out of the main fact and serve to illustrate its character and are so spontaneous and contemporaneous with the main fact as to exclude the idea of deliberation and fabrication. The test of admissibility of evidence as a part of the *res gestae* is, therefore, whether the act, declaration, or exclamation, is so interwoven or connected with the principal fact or event that it characterizes as to be regarded as a part of the transaction itself, and also whether it clearly negates any premeditation or purpose to manufacture testimony.[41]

The requisites for admissibility of a declaration as part of the *res gestae* concur herein. When Januario gave the identity of the assailants to SPO3 Mendoza, he was referring to a startling occurrence which is the stabbing by appellant and his co-accused. At that time, Januario and the witness were in the vehicle that would bring him to the hospital, and thus, had no time to contrive his identification of the assailant. His utterance about appellant and his co-accused having stabbed him, in answer to the question of SPO3 Mendoza, was made in spontaneity and only in reaction

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[40] *Belbis, Jr. v. People*, G.R. No. 181052, November 14, 2012, 685 SCRA 518, 530-531.

[41] *People v. Salafranca*, G.R. No. 173476, February 22, 2012, 666 SCRA 501, 514.

to the startling occurrence. Definitely, the statement is relevant because it identified the accused as the authors of the crime. Verily, the killing of Januario, perpetrated by appellant, is adequately proven by the prosecution.

From the evidence presented, we find that as alleged in the information, abuse of superior strength attended the commission of the crime, and thus, qualifies the offense to murder. Abuse of superior strength is considered whenever there is a notorious inequality of forces between the victim and the aggressor, assessing a superiority of strength notoriously advantageous for the aggressor which the latter selected or took advantage of in the commission of the crime.[42]

It is clear from the records of the case that Januario was then fifty-four (54) years old. Appellant, on the other hand, was then forty (40) years old. Appellant committed the crime with his co-accused, his nephew. Clearly, assailants are younger than the victim. These two accused were seen by Umali as the persons who mauled Januario. Moreover, assailants were armed with a bladed weapon, while Januario was unarmed. This same bladed weapon was used in repeatedly stabbing Januario, who no longer showed any act of defense. Dr. Rasa, the medical doctor who attended to Januario when he was brought to the hospital, also testified as to the nature and extent of the injury sustained by Januario. He clearly stated that Januario sustained three fatal injuries which caused his death. The pertinent portion of Dr. Rasa's testimony reads:

ATTY. MASANGYA:
Q How many injuries were sustained by the victim, Mr. Witness?
A Three.

Q In what parts of the body was the victim injured?
A The victim sustained three injuries: one on the left side of the parasternal border the heart (*sic*) and it penetrated, and then the second one was on the right side of the chest near the shoulder and the third one was under the armpit also to the chest.

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[42] *People v. Calpito*, 462 Phil. 172, 179 (2003).

ATTY. MASANGYA:

Q Which of those injuries caused the death of the victim?

A All of them are fatal, because the one over the heart penetrated the heart and the aorta. The one in the anterior chest near the right shoulder hit the blood vessels of the armpit and the wound under the armpit apparently hit the lungs.

x x x x x x x x x[43]

This same physician issued the Medical Certificate explaining the location of the stab wounds as well as the cause of death of Januario, to wit:

Location of Stab Wounds:

1. Stab wound penetrating 2nd inter-costal space left para-sternal border, 6" deep penetrating the heart chambers and aorta
2. Stab wound over the right anterior deltoid muscle, penetrating 3" into the right axilla space; injuring the axilla blood vessels.
3. Stab wound over the right axilla, penetrating to the right chest cavity.

CAUSES OF DEATH

Immediate Cause: Hypovolemic Shock
Antecedent Cause: Multiple stab wounds to the anterior chest, right axilla, and right axilla penetrating the chest cavity.

x x x x x x x x x[44]

From the testimony of the eyewitness and corroborated by the medical certificate of Dr. Rasa, it can be inferred that indeed the qualifying circumstance of abuse of superior strength attended the commission of the crime. To be sure, with two assailants younger than the victim, armed with a bladed weapon and inflicting multiple mortal wounds on the victim, there is definitely abuse of superior strength deliberately taken advantage of by appellant and his co-accused in order to consummate the offense.

Now on the penalty. Article 248 of the Revised Penal Code provides:

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[43] TSN, May 24, 2007, pp. 5-6.

[44] Records, p. 144.

ART. 248. *Murder*. – Any person who, not falling within the provisions of Article 246 shall kill another, shall be guilty of murder and shall be punished by *reclusion perpetua* to death if committed with any of the following attendant circumstances:

1. With treachery, ***taking advantage of superior strength,*** with the aid of armed men, or employing means to weaken the defense or of means or persons to insure or afford impunity.

x x x x x x x x x[45]

There being neither mitigating nor aggravating circumstances, appellant shall be meted the penalty of *reclusion perpetua*.

Finally, the award of damages. In murder, the grant of civil indemnity which has been fixed by jurisprudence at ₱50,000.00 requires no proof other than the fact of death as a result of the crime and proof of the accused's responsibility therefor. Moral damages, on the other hand, which in this case is also ₱50,000.00 are awarded in view of the violent death of the victim.[46] Moreover, exemplary damages in the amount of ₱30,000.00 should likewise be given, considering that the offense was attended by an aggravating circumstance whether ordinary, or qualifying as in this case. As duly proven by Maria Castillo, actual damages representing the hospital and funeral expenses, as evidenced by receipts in the amount of ₱35,300.00, be awarded. Finally, in addition and in conformity with current policy, we also impose on all the monetary awards for damages an interest at the legal rate of six percent (6%) from date of finality of this decision until full payment.[47]

WHEREFORE, premises considered, we **MODIFY** the Court of Appeals Decision dated February 23, 2011 in CA-G.R. CR

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[45] Emphasis supplied.

[46] *People v. Gutierrez*, G.R. No. 188602, February 4, 2010, 611 SCRA 633, 646-647.

[47] *People v. Camat*, G.R. No. 188612, July 30, 2012, 677 SCRA 640, 672; *People v. Concillado*, G.R. No. 181204, November 28, 2011, 661 SCRA 363, 384; *People v. Rebucan*, G.R. No. 182551, July 27, 2011, 654 SCRA 726, 760.

H.C. No. 03593, affirming the Regional Trial Court Decision dated June 20, 2008 in Criminal Case No. 13838, convicting appellant Eduardo Quisayas of *Robbery with Homicide*. We find appellant guilty beyond reasonable doubt of the crime of **MURDER** and is sentenced to suffer the penalty of *reclusion perpetua*.

We, likewise, **ORDER** appellant **TO PAY** the heirs of the victim Januario Castillo *y* Masangcay the following: (1) ₱35,300.00 actual damages; (2) ₱50,000.00 civil indemnity; (3) ₱50,000.00 moral damages; (4) ₱30,000.00 exemplary damages; plus (5) six percent (6%) interest on all damages awarded from the date of the finality of this decision until full payment.

SO ORDERED.

Velasco, Jr. (Chairperson), Abad, Mendoza, and *Leonen, JJ.,* concur.

SECOND DIVISION

[G.R. No. 198059. April 7, 2014]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ANTONIO LUJECO *y* MACANOQUIT *alias* "TONYO",** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; STATUTORY RAPE; ELEMENTS; ESTABLISHED; PENALTY OF *RECLUSION PERPETUA*, IMPOSED.— Both the trial court and the Court of Appeals properly convicted appellant of statutory rape defined under Article 266-A of the Revised Penal Code. "The elements of [statutory rape] are: (1) that the accused had carnal knowledge of a woman; and (2) that the woman is below 12 years of age

or is demented." In this case, the prosecution satisfactorily established that appellant had carnal knowledge of "AAA". It was also established beyond reasonable doubt that "AAA" was below 12 years of age. "The sentence of *reclusion perpetua* imposed upon accused-appellant by the [trial court], affirmed by the Court of Appeals, for the crime of statutory rape x x x is in accordance with Article 266-B of the Revised Penal Code, as amended." However, appellant is not eligible for parole.

2. ID.; ID.; CIVIL LIABILITIES OF ACCUSED-APPELLANT.— As regards the damages awarded by the trial court and affirmed by the Court of Appeals, the same must be modified. The award of civil indemnity must be reduced from ₱75,000.00 to ₱50,000.00 in line with the prevailing jurisprudence. Likewise, the award of moral damages must be decreased from ₱75,000.00 to ₱50,000.00. The award of actual damages in the amount of ₱25,000.00 must be deleted for lack of basis. However, "AAA" is entitled to an award of exemplary damages in the amount of ₱30,000.00. In addition, all the damages awarded shall earn legal interest at the rate of 6% *per annum* from date of finality of this Resolution until fully paid

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

R E S O L U T I O N

DEL CASTILLO, *J.*:

Appellant Antonio Lujeco *y* Macanoquit was charged with the crime of rape[1] committed on June 29, 2002 against

[1] The accusatory portion of the Information reads as follows:

That on or about the 29th day of June 2002, at Purok 12, Poblacion Sur, municipality of Don Carlos, province of Bukidnon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design, did then and there willfully, unlawfully and criminally approach and grab "AAA" and bring her to the house of "BBB" and forcibly have sexual intercourse with "AAA", a 7[-] year old minor, against her will, to the damage and prejudice of "AAA" in such amount as may be allowed by law.

"AAA",[2] a seven-year old minor.[3] Appellant pleaded not guilty when arraigned on February 27, 2003.[4] After trial, the Regional Trial Court of Malaybalay, Branch 8, rendered a Decision[5] finding appellant guilty of statutory rape.[6]

As found by the trial court, the prosecution has satisfactorily established that in the morning of June 29, 2002, "AAA" was playing with her friends near the old market at Don Carlos, Bukidnon, which was about 20 meters away from her house. After her playmates left, appellant suddenly grabbed "AAA" and dragged her to the house of his granddaughter which was located nearby. Inside the house, appellant forcibly undressed "AAA", poked a knife at her, and then had carnal knowledge of her. After satiating his lust, appellant told "AAA" to go home.

Aggrieved, appellant appealed to the Court of Appeals which rendered its Decision[7] dated April 29, 2011 affirming in full the Decision of the trial court, *viz*:

Contrary to and in violation of Article 266-A of the Revised Penal Code as amended by R.A. 8353. (Records, p. 16.)

[2] "The real names of the victim and of the members of her immediate family are withheld pursuant to Republic Act No. 7610 (Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act) and Republic Act No. 9262 (Anti-Violence Against Women and Their Children Act of 2004.)" *People v. Teodoro*, G.R. No. 175876, February 20, 2013, 691 SCRA 324, 326.

[3] "AAA" was born on July 26, 1995; records, p. 45.

[4] *Id*. at 22.

[5] *Id*. at 65-77; penned by Judge Pelagio B. Estopia.

[6] The dispositive portion of the Decision reads:

WHEREFORE, this court finds the accused Antonio Lujeco GUILTY beyond reasonable doubt of the crime of rape and imposes upon him pursuant to Article 266-B paragraph 4, no. 1 of the Revised Penal Code, as amended by Republic Act [N]o. 7659 the penalty of *Reclusion Perpetua* and to indemnify the offended party in the amount of ₱75,000 as civil indemnity; ₱75,000 as moral damages and ₱25,000.00 actual damages. The accused shall serve his penalty in the national penitentiary of Davao penal colony.

SO ORDERED. (*Id*. at 77.)

[7] CA *rollo*, pp. 78-87; penned by Associate Justice Edgardo T. Lloren and concurred in by Associate Justices Romulo V. Borja and Rodrigo F. Lim, Jr.

WHEREFORE, the assailed Decision of the Regional Trial Court, Branch 8, Malaybalay City, finding accused-appellant Antonio Lujeco *alias* Tonyo guilty beyond reasonable doubt of the crime of rape is AFFIRMED *in toto* with costs against accused-appellant.

SO ORDERED.[8]

Hence, this appeal.[9]

In his Supplemental Brief,[10] appellant claims that the trial court and the appellate court erred in giving credence to the testimony of "AAA".[11] He argues that "AAA" was "under pressure by her mother"[12] or was coached as the latter was embracing "AAA" while "AAA" was on the witness stand.

This contention deserves no consideration.

It is worth emphasizing that "AAA" was only seven years of age when raped; and eight years old when placed on the witness stand. At the start of her testimony, the trial judge asked if "AAA" needed a "support person."[13] The prosecution replied that her mother would act as her support. Notably, the defense offered no objection. Thus, it is now too late in the proceedings for appellant to assail the same.

Besides, we have perused the records[14] and found that "AAA's" mother never uttered any word while "AAA" was testifying. If at all, the records only showed that her mother was embracing "AAA" while the latter was testifying. There was no coaching whatsoever. That she admitted during cross-examination that her mother told her "to always remember"[15] when testifying,

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[8] *Id.* at 86-87.

[9] *Id.* at 93-95.

[10] *Rollo*, pp. 45-55.

[11] *Id.* at 47.

[12] *Id.* at 48.

[13] TSN, November 19, 2003, p. 3.

[14] *Id.* at 1-30.

[15] *Id.* at 17.

does not diminish her credibility. On the contrary, we interpret this as a mere reminder from her mother for "AAA" to remember every detail so that appellant would stay in jail. For reference, the pertinent testimony of "AAA" reads as follows:

Q. What did your mother tell you before you testified today?
A. She told me to always remember.

Q. What in particular was that she wanted you to always remember?
A. She said, "AAA, you have to remember always so that they will [be] put to shame."

Q. Do you know who was that your mother was referring to be put to shame when she told you to remember always something?
A. Yes.

Q. Who?
A. Them, Tonyo.

Q. Tonyo Lujeco, the one whom you pointed to earlier, am I correct?
A. Yes.

Q. What else did your mother tell you?
A. My mother told me that if I will not remember always, if I am not going to remember always, that will cause Tonyo to be released.[16]

More importantly, the records show that "AAA" testified in a categorical and straightforward manner despite her youth. She was unequivocal in her narration and in pointing to the appellant as the rapist. As correctly observed by the trial court:

Her tender age notwithstanding, "AAA" nonetheless appeared to possess the necessary intelligence and perceptiveness sufficient to invest her with the competence to testify about her experience. She might have been an impressionable child – as all others of her age are – but her narration of the facts relating to the incident is clear. x x x Her demeanor as a witness – manifested during trial by her unhesitant spontaneous and plain responses to questions further enhanced her claim to credit and trustworthiness.[17]

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[16] *Id*. at 17-18.

[17] Records, p. 70.

x x x x x x x x x

x x x This court observed the clear, candid, and straightforward manner that the victim narrated how the accused sexually violated her. This court finds no cogent reason to deviate from that observation. Moreover the court finds simply inconceivable for "AAA", eight (8) years of age, with all her naivete and innocence, to fabricate a story of defloration, allow an examination of her private parts, and thereafter submit herself to a public trial or ridicule, if she had not, in fact, been a victim of rape and deeply motivated by a sincere desire to have the culprit apprehended and punished. x x x[18]

The Court of Appeals also correctly observed that:

Based on AAA's testimony, it is clear that the appellant had carnal knowledge of the victim who was under twelve (12) years old. AAA categorically recounted the details of how appellant raped her by pushing hard to insert his penis into her labia majora. She was only seven (7) years old when she was raped. It is improbable that a victim of tender years, especially one unexposed to the ways of the world as AAA must have been, would impute a crime as serious as rape if it were not true. There is no doubt that AAA was impelled solely by a desire to let justice find its way. In this regard, it is worthy to note that jurisprudence is one in recognizing that when the offended parties are young and immature girls, courts are inclined to lend credence to their version of what transpired, considering not only their relative vulnerability but also the shame and embarrassment to which they would be exposed by court trial if the matter about which they testified is not true.[19]

Besides, "AAA's" testimony was corroborated by the medical findings of Dr. Marichu Macias (Dr. Macias). Dr. Macias testified that "AAA" suffered fresh[20] hymenal lacerations;[21] that the victim was "positive for sexual molestation injury"[22] as there were

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[18] *Id*. at 73-74.

[19] CA *rollo*, p. 85.

[20] TSN, August 31, 2004, p. 9.

[21] *Id*. at 5.

[22] *Id*. at 10.

"contusion-hematoma x x x triangular in shape found in both sides of the labia majora of the victim."[23]

We find no merit in appellant's argument that the contusion or hematoma in "AAA's" private part could have been caused by riding a bike. Even at her tender age, "AAA" categorically testified that appellant inserted his penis into her vagina and pushed it hard.[24]

Finally, appellant claims that his alibi, although concededly a weak defense, should not be disregarded. We are not persuaded. We agree with the ruling of the appellate court, *viz*:

> As regards appellant's contention that the trial court gravely erred in convicting him despite the fact that during the time that the alleged rape was committed, he was at the public market of Don Carlos, the Court finds the same wanting in merit.
>
> It has been held, time and again, that alibi, as a defense, is inherently weak and crumbles in light of positive identification by truthful witnesses. It should be noted that for alibi to prosper, it is not enough for the accused to prove that he was in another place when the crime was committed. He must likewise prove that it was physically impossible for him to be present at the crime scene or its immediate vicinity at the time of its commission. As testified by the appellant, he was at the public market of Don Carlos, Bukidnon x x x. Undoubtedly, x x x it [was not] impossible for him to be at the crime scene x x x.[25]

Both the trial court and the Court of Appeals properly convicted appellant of statutory rape defined under Article 266-A[26] of the

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[23] *Id*. at 11.

[24] TSN, November 19, 2003, p. 11.

[25] CA *rollo*, p, 86.

[26] Art. 266-A. *Rape, When and How Committed* – Rape is committed –

1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:

a. Through force, threat or intimidation;

b. When the offended party is deprived of reason or is otherwise unconscious;

Revised Penal Code. "The elements of [statutory rape] are: (1) that the accused had carnal knowledge of a woman; and (2) that the woman is below 12 years of age or is demented."[27] In this case, the prosecution satisfactorily established that appellant had carnal knowledge of "AAA." It was also established beyond reasonable doubt that "AAA" was below 12 years of age.[28] "The sentence of *reclusion perpetua* imposed upon accused-appellant by the [trial court], affirmed by the Court of Appeals, for the crime of statutory rape x x x is in accordance with Article 266-B of the Revised Penal Code, as amended."[29] However, appellant is not eligible for parole.[30]

As regards the damages awarded by the trial court and affirmed by the Court of Appeals, the same must be modified. The award of civil indemnity must be reduced from ₱75,000.00 to ₱50,000.00 in line with the prevailing jurisprudence.[31] Likewise, the award

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c. By means of fraudulent machination or grave abuse of authority;

d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present. (Emphases supplied)

[27] *People v. Amistoso*, G.R. No. 201447, January 9, 2013, 688 SCRA 376, 383.

[28] The Information alleged that "AAA" was a seven-year old minor at the time of the rape incident having been born on July 26, 1995. In reality, however, "AAA" was only six years, eleven months and 3 days old when the rape transpired on June 29, 2002. Appellant could have been found guilty of qualified rape penalized under Article 266-B(5) of the Revised Penal Code had it been specifically alleged in the Information that "AAA" was a child below seven (7) years old. However, since this circumstance was not specifically alleged in the Information, the same cannot be considered to have qualified the crime and merit the imposition of the death penalty.

[29] *People v. Vergara*, G.R. No. 199226, January 25, 2014.

[30] Pursuant to Section 3 of Republic Act No. 9346 (An Act Prohibiting The Imposition of Death Penalty In The Philippines) which provides:

Sec. 3. Person convicted of offenses punished with *reclusion perpetua*, or whose sentences will be reduced to *reclusion perpetua*, by reason of this Act, shall not be eligible for parole under Act No. 4180, otherwise known as the Indeterminate Sentence Law, as amended.

[31] *People v. Vergara*, *supra* note 29.

of moral damages must be decreased from ₱75,000.00 to ₱50,000.00.[32] The award of actual damages in the amount of ₱25,000.00 must be deleted for lack of basis. However, "AAA" is entitled to an award of exemplary damages in the amount of ₱30,000.00.[33] In addition, all the damages awarded shall earn legal interest at the rate of 6% *per annum* from date of finality of this Resolution until fully paid.[34]

WHEREFORE, the appeal is **DISMISSED**. The April 29, 2011 Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 00772 finding appellant Antonio Lujeco *y* Macanoquit guilty beyond reasonable doubt of the crime of statutory rape and sentencing him to suffer the penalty of *reclusion perpetua* is **AFFIRMED** with **MODIFICATIONS** that appellant is not eligible for parole; the awards of civil indemnity and moral damages are each reduced to ₱50,000.00; the award of actual damages in the amount of ₱25,000.00 is deleted for lack of basis; instead, "AAA" is entitled to an award of exemplary damages in the amount of ₱30,000.00; and all damages awarded shall earn interest at the rate of 6% *per annum* from date of finality of judgment until fully paid.

SO ORDERED.

Carpio (Chairperson), Brion, Perez, and *Perlas-Bernabe, JJ.*, concur.

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[32] *Id.*

[33] *Id.*

[34] *Id.*

THIRD DIVISION

[G.R. No. 199022. April 7, 2014]

MAGSAYSAY MARITIME CORPORATION, *petitioner, vs.* **OSCAR D. CHIN, JR.,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; EMPLOYEES' COMPENSATION; DISABILITY SHOULD NOT BE UNDERSTOOD MORE ON ITS MEDICAL SIGNIFICANCE BUT ON THE LOSS OF EARNING CAPACITY FOR WHAT IS COMPENSATED IS ONE'S INCAPACITY TO WORK RESULTING IN THE IMPAIRMENT OF HIS EARNING CAPACITY.— [T]he Labor Arbiter's award of loss of earning is unwarranted since Chin had already been given disability compensation for loss of earning capacity. An additional award for loss of earnings will result in double recovery. In a catena of cases, the Court has consistently ruled that disability should not be understood more on its medical significance but on the loss of earning capacity. Permanent total disability means disablement of an employee to earn wages in the same kind of work, or work of similar nature that he was trained for or accustomed to perform, or any kind of work which a person of his mentality and attainment could do. Disability, therefore, is not synonymous with "sickness" or "illness." What is compensated is one's incapacity to work resulting in the impairment of his earning capacity.

2. ID.; ID.; THE PHILIPPINE OVERSEAS EMPLOYMENT AGENCY STANDARD CONTRACT OF EMPLOYMENT (POEA SCE) DOES NOT PROVIDE FOR THE GRANT OF LOSS OF EARNING BUT FOR THE PAYMENT OF THE SEAFARER'S INJURY, ILLNESS, INCAPACITY, DISABILITY OR DEATH ARISING FROM OR IN RELATION WITH OR IN THE COURSE OF THE SEAFARER'S EMPLOYMENT INCLUDING BUT NOT LIMITED TO DAMAGES ARISING FROM THE CONTRACT, TORT, FAULT OR NEGLIGENCE UNDER THE LAWS OF THE PHILIPPINES OR ANY OTHER COUNTRY.— [T]he award for loss of earning lacks basis

since the Philippine Overseas Employment Agency (POEA) Standard Contract of Employment (POEA SCE), the governing law between the parties, does not provide for such a grant. What Section 20, paragraph (G) of the POEA SCE provides is that payment for injury, illness, incapacity, disability, or death of the seafarer covers "all claims arising from or in relation with or in the course of the seafarer's employment, including but not limited to damages arising from the contract, tort, fault or negligence under the laws of the Philippines or any other country." The permanent disability compensation of US$60,000 clearly amounts to reasonable compensation for the injuries and loss of earning capacity of the seafarer.

3. ID.; ID.; THE LOSS OF EARNING IS RECOVERABLE IF THE ACTION IS BASED ON THE QUASI-DELICT PROVISION OF ARTICLE 2206 OF THE CIVIL CODE.— In awarding damages for loss of earning capacity, the Labor Arbiter relies on the rulings in *Villa Rey Transit v. Court of Appeals* and *Baliwag Transit, Inc. v. Court of Appeals*. But these cases involve essentially claims for damages arising from *quasi-delict.* The present case, on the other hand, involves a claim for disability benefits under Chin's contract of employment and the governing POEA set standards of recovery. The long-standing rule is that loss of earning is recoverable if the action is based on the *quasi-delict* provision of Article 2206 of the Civil Code.

4. CIVIL LAW; DAMAGES; MORAL DAMAGES; IN ORDER TO ARRIVE AT A JUDICIOUS APPROXIMATION OF EMOTIONAL OR MORAL INJURY, COMPETENT AND SUBSTANTIAL PROOF OF THE SUFFERING EXPERIENCED MUST BE LAID BEFORE THE COURT.— While the Labor Arbiter can grant moral and exemplary damages, the amounts he fixed in this case are quite excessive in the absence of evidence to prove the degree of moral suffering or injury that Chin suffered. It has been held that in order to arrive at a judicious approximation of emotional or moral injury, competent and substantial proof of the suffering experienced must be laid before the court. It is worthy to stress that moral damages are awarded as compensation for actual injury suffered and not as a penalty. The Court believes that an award of ₱30,000.00 as moral damages is commensurate to the anxiety and inconvenience that Chin suffered.

5. ID.; ID.; EXEMPLARY DAMAGES; IMPOSED NOT TO ENRICH ONE PARTY OR IMPOVERISH ANOTHER BUT TO SERVE AS A DETERRENT AGAINST OR AS A NEGATIVE INCENTIVE TO CURB SOCIALLY DELETERIOUS ACTIONS.— As for exemplary damages, the award of ₱25,000.00 is already sufficient to discourage petitioner Magsaysay from entering into iniquitous agreements with its employees that violate their right to collect the amounts to which they are entitled under the law. Exemplary damages are imposed not to enrich one party or impoverish another but to serve as a deterrent against or as a negative incentive to curb socially deleterious actions.

APPEARANCES OF COUNSEL

Velicaria Egenias for petitioner.
Capuyan & Quimpo Law Office for respondent.

D E C I S I O N

ABAD, *J.*:

The Facts and the Case

Thome Ship Management Pte. Ltd., acting through its agent petitioner Magsaysay Maritime Corporation (Magsaysay) hired respondent Oscar D. Chin, Jr. to work for nine months as able seaman on board MV Star Siranger.[1] Chin was to receive a basic pay of US$515 per month.[2] Magsaysay deployed him on July 20, 1996.

On October 22, 1996 Chin sustained injuries while working on his job aboard the vessel. Dr. Solan of Wilmington, North Carolina, USA, examined him on November 29, 1996 and found him to have suffered from lumbosacral strain due to heavy lifting of pressurized machine. The doctor gave him medications and advised him to see an orthopedist and a cardiologist. Chin was repatriated on November 30, 1996.

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[1] See Contract of Employment, CA *rollo*, p. 340.

[2] *Id*.

On return to the Philippines, Chin underwent a surgical procedure called laminectomy and discectomy L-4-L-5. A year after the operation, Dr. Robert D. Lim of the Metropolitan Hospital diagnosed Chin to have a moderate rigidity of his tract.

On August 6, 1998 Chin filed a claim for disability with Pandiman Phils., Inc. which is the local agent of P & I Club of which Magsaysay Maritime is a member. Pandiman offered US$30,000.00 as disability compensation which Chin accepted on August 6, 1998. He then executed a Release and Quitclaim in favor of Magsaysay Maritime.

On September 29, 1998 Chin filed a complaint with the National Labor Relations Commission (NLRC), claiming underpayment of disability benefits and attorney's fees. He later amended his complaint to include claims for damages.

The Labor Arbiter dismissed Chin's complaint for lack of merit. The NLRC affirmed the dismissal on May 17, 2001. On appeal, however, the Court of Appeals (CA) reversed the dismissal and ruled that Chin was entitled to permanent total disability benefit of US$60,000.00. The CA remanded the case to the Labor Arbiter for determination of the other monetary claims of Chin. This prompted petitioner Magsaysay to come before this court on a petition for review on *certiorari*. The Court denied the petition, however, in a Resolution dated September 8, 2003. This Resolution became final and executory on February 23, 2004.

On September 28, 2004 petitioner Magsaysay paid the deficiency award of US$30,000.00 in full and final settlement of Chin's disability compensation claim. On February 26, 2007, however, the Labor Arbiter rendered a Decision ordering it to pay Chin: a) ₱19,279.75 as reimbursement for medical expenses; b) US$147,026.43 as loss of future wages; c) ₱200,000.00 as moral damages; d) ₱75,000.00 as exemplary damages; and e) 10% of the total award as attorney's fees.

On November 25, 2008 the NLRC modified the Labor Arbiter's Decision by deleting the awards of loss of future wages and moral and exemplary damages for lack of factual and legal bases.

On appeal, the CA reversed the NLRC's Decision and ordered the reinstatement of the Labor Arbiter's Decision, hence, this petition.

The Issue Presented

The key issue in this case is whether or not the CA erred in affirming the Labor Arbiter's award of loss of future earnings on top of his disability benefits as well as awards of moral and exemplary damages and attorney's fees.

Ruling of the Court

Respondent Chin contends that the petition should be dismissed on the ground of *res judicata* in that the CA's Decision in CA-G.R. SP 67803 authorized the determination of Chin's other monetary claims. The additional award to him of actual, compensatory, moral and exemplary damages as well as attorney's fees was a determination of those other claims. These awards, he claims, can no longer be disturbed.

But *res judicata* applies to second actions involving substantially the same parties, the same subject matter, and cause or causes of action.[3] Here, there is no second action to speak of since the subsequent awards were merely the result of a remand from the CA for the Labor Arbiter to determine the amounts to which Chin is entitled to receive aside from the full US$60,000.00 permanent total disability compensation.

Definitely, the Labor Arbiter's award of loss of earning is unwarranted since Chin had already been given disability compensation for loss of earning capacity. An additional award for loss of earnings will result in double recovery. In a catena of cases,[4] the Court has consistently ruled that disability should

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[3] *Oriental Shipmanagement Co., Inc. v. Bastol*, G.R. No. 186289, June 29, 2010, 622 SCRA 352, 373, citing I Regalado, *REMEDIAL LAW COMPENDIUM* 472-473 (6th rev. ed.).

[4] *Magsaysay Maritime Corp. v. Velasquez*, 591 Phil. 839, 851 (2008); *Employees' Compensation Commission v. Sanico*, 378 Phil. 900, 904 (1999); *Government Service Insurance System v. Court of Appeals*, 349 Phil. 357, 364 (1998); *Government Service Insurance System v. Court of Appeals*, 328 Phil. 1240, 1246 (1996); *Bejerano v. Employees' Compensation Commission*, G.R. No. 84777, January 30, 1992, 205 SCRA 598, 602.

not be understood more on its medical significance but on the loss of earning capacity. Permanent total disability means disablement of an employee to earn wages in the same kind of work, or work of similar nature that he was trained for or accustomed to perform, or any kind of work which a person of his mentality and attainment could do. Disability, therefore, is not synonymous with "sickness" or "illness." What is compensated is one's incapacity to work resulting in the impairment of his earning capacity.[5]

Moreover, the award for loss of earning lacks basis since the Philippine Overseas Employment Agency (POEA) Standard Contract of Employment (POEA SCE), the governing law between the parties, does not provide for such a grant. What Section 20, paragraph (G) of the POEA SCE provides is that payment for injury, illness, incapacity, disability, or death of the seafarer covers "all claims arising from or in relation with or in the course of the seafarer's employment, including but not limited to damages arising from the contract, tort, fault or negligence under the laws of the Philippines or any other country." The permanent disability compensation of US$60,000 clearly amounts to reasonable compensation for the injuries and loss of earning capacity of the seafarer.

In awarding damages for loss of earning capacity, the Labor Arbiter relies on the rulings in *Villa Rey Transit v. Court of Appeals*[6] and *Baliwag Transit, Inc. v. Court of Appeals*.[7] But these cases involve essentially claims for damages arising from *quasi-delict.* The present case, on the other hand, involves a claim for disability benefits under Chin's contract of employment and the governing POEA set standards of recovery. The long-standing rule is that loss of earning is recoverable if the action is based on the *quasi-delict* provision of Article 2206 of the Civil Code.[8]

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[5] See: *Bejerano v. Employees' Compensation Commission, id.*

[6] G.R. No. L-25499, February 18, 1970, 31 SCRA 511.

[7] 330 Phil. 785 (1996).

[8] *Tolosa v. National Labor Relations Commission*, 449 Phil. 271, 282 (2003).

While the Labor Arbiter can grant moral and exemplary damages, the amounts he fixed in this case are quite excessive in the absence of evidence to prove the degree of moral suffering or injury that Chin suffered. It has been held that in order to arrive at a judicious approximation of emotional or moral injury, competent and substantial proof of the suffering experienced must be laid before the court.[9] It is worthy to stress that moral damages are awarded as compensation for actual injury suffered and not as a penalty. The Court believes that an award of ₱30,000.00 as moral damages is commensurate to the anxiety and inconvenience that Chin suffered.

As for exemplary damages, the award of ₱25,000.00 is already sufficient to discourage petitioner Magsaysay from entering into iniquitous agreements with its employees that violate their right to collect the amounts to which they are entitled under the law. Exemplary damages are imposed not to enrich one party or impoverish another but to serve as a deterrent against or as a negative incentive to curb socially deleterious actions.[10]

WHEREFORE, the Court **PARTIALLY GRANTS** the petition and **AFFIRMS** the February 28, 2011 Decision of the Court of Appeals and its October 11, 2011 Resolution with **MODIFICATION**. The award of loss of earning is **DELETED** and petitioner Magsaysay Maritime Corporation is **ORDERED** to pay respondent Oscar D. Chin, Jr. ₱19,279.95 as reimbursement for medical expenses, ₱30,000.00 as moral damages, ₱25,000.00 as exemplary damages, and attorney's fees equivalent to 10% of the total of these amounts.

SO ORDERED.

Velasco, Jr. (Chairperson), Peralta, Mendoza, and *Leonen, JJ.,* concur.

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[9] *Philippine Commercial International Bank v. Alejandro*, 591 Phil. 107, 109 (2008).

[10] *Philippine National Bank v. Court of Appeals*, 326 Phil. 326, 343-344 (1996).

SECOND DIVISION

[G.R. No. 199070. April 7, 2014]

PEOPLE OF THE PHILIPPINES, *petitioner, vs.* **VICENTE R. ESPINOSA and LINDSEY BUENAVISTA,** *respondents*.

[G.R. No. 199237. April 7, 2014]

RAMON CAESAR T. ROJAS for himself and as representative of the HEIRS OF RAMON ROJAS JR., *petitioners, vs.* **VICENTE R. ESPINOSA and LINDSEY BUENAVISTA,** *respondents*.

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; RULE; THE PETITION FOR *CERTIORARI* MUST BE FILED WITIN THE 60-DAY REGLEMENTARY PERIOD.— The first procedural error was the failure to file the petition within the reglementary period. Section 4 of Rule 65 of the Rules of Court, as amended under A.M. No. 07-7-12-SC, provides a strict deadline for the filing of petitions for *certiorari*; SECTION 4. When and Where to File the Petition. — The petition shall be filed not later than sixty (60) days from notice of the judgment, order or resolution. In case a motion for reconsideration or new trial is timely filed, whether such motion is required not not, the petition shall be filed not later than sixty (60) days counted from the notice of the denial of the motion. x x x We deleted the clause in Section 4, Rule 65 that permitted extensions of the period to file petitiones for *certiorari*, since sixty (60) days is more than ample time to sufficiently prepare for filing.

2. ID.; ID.; ID.; ID.; EXTENSION OF THE 60-DAY REGLEMENTARY PERIOD FOR FILING PETITION FOR *CERTIORARI,* WHEN ALLOWED; RULES LIBERALLY APPLIED TO CASE AT BAR.— The 60-day period may be extended under any of the circumstances provided in the earlier case of *Labao v. Flores*, The recognized exceptions

are: 1. most persuasive and weighty reasons; 2. to relieve a litigant from an injustice not commensurate with his failure to comply with the prescribed procedure; 3. good faith of the defaulting party by immediately paying within a reasonable period of time from the time of the default; 4. the existence of special or compelling circumstances; 5. the merits of the case; 6. a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules; 7. a lack of any showing that the review sought is merely frivolous and dilatory; 8. the other party will not be unjustly prejudiced thereby; 9. fraud, accident, mistake or excusable negligence without appellant's fault; 10. peculiar legal ang equitable circumstances attendant to each case; 11. in the name of substantial justice and fair play; 12. importance of the issues involved; and 13. exercise of sound discretion by the judge guided by all the attendant circumstances. Thus, there should be an effort on the part of the party invoking liberality to advance a reasonable or meritorious explanation for his/her failure to comply with the rules. In the instant case, private complainants had to transmit documents to the OSG. Records clearly show that they were able to do so promptly. On 30 November 2010, counsel for private complainants Atty. Penetrante submitted to the Office of the Prosecutor General the draft petition for *certiorari*, the verification and certification against forum shopping, the original copies containing the signatures of the private prosecutors, and the certified copies of the annexes. These documents were received by the OSG on 3 December 2010 only. Given the circumstances, we hold that the CA Cebu should have applied the rules liberally and excused the belated filing.

3. LEGAL ETHICS; ATTORNEYS; ATTORNEY-CLIENT RELATIONSHIP; THE NEGLIGENCE OF COUNSEL BINDS THE CLIENT; EXCEPTION; PRESENT.— Section 13 of Rule 13 of the Rules of Court states that for pleadings served through registered mail, proof or service shall be made through an affidavit of the person mailling the pleading, and the registry receipts issued by the post office. The OSG was remiss in its duties as counsel when it failed to serve a copy to respondents before filing of the petition. As regards the Explanation, it is clear that the erroneous referral to a "Motion for Extension" instead of a Petition for *Certiorari* was just a mere typographical error. While we acknowledge that the OSG committed glaring errors, we deem it unjust to penalize private

> complainants for the OSG's carelessness. It is important to point out that private complainants quickly informed the OSG of the oversight x x x It would be unjust to penalize private complainants for the negligence of the OSG. In *Multi-Trans Agency Phils., Inc. v. Oriental Assurance Corp.,* we discussed the general rule and exceptions with respect to the effect of counsel's negligence on a client: x x x [W]hile it is settled that negligence of counsel binds the client, this rule is not without exception. In cases where reckless or gross negligence of counsel, like in this case deprives the client of due process of law, or when the application would result in outright deprivation of the client's liberty property, or where the interest of justice so requires, relief is accorded to the client who suffered by reason of the lawyer's gross or palpable mistake or negligence.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner.
Teruel Law Office and *Ilarde Penetrante Tungala and Associates* for Ramon Caesar T. Rojas, *et al.*
Rey M. Padilla for respondent Espinosa.
Taneza Law Office for respondent Buenavista.

D E C I S I O N

CARPIO, *J.*:

The Case

Before this Court are consolidated petitions for review filed under Rule 45 of the Rules of Court assailing the following Resolutions of the Court of Appeals, Cebu City (CA-Cebu) in CA-G.R. SP No. 05617 entitled "*The People of the Philippines, et al. v. Judge Florian Gregory D. Abalajon, et al.*": (a) the Resolution dated 21 January 2011 dismissing the Petition for *Certiorari* (under Rule 65) dated 14 December 2010[1]; and

[1] *Rollo* (G.R. No. 199070) pp. 69-71. Penned by Justice Eduardo B. Peralta, Jr. with Justices Edgardo L. Delos Santos and Agnes Reyes-Carpio, concurring.

(b) the Resolution dated 3 October 2011 denying the Motion for Reconsideration dated 24 February 2011 filed by the People of the Philippines.[2]

G.R. No. 199070 was filed by the People of the Philippines (petitioner) represented by the Office of the Solicitor General (OSG), while G.R. No. 199237 was filed by Ramos Caesar T. Rojas, for himself and as representative of the heirs of Ramon Rojas, Jr. (private complainants).

The Facts

On 22 May 2008, Ramon Rojas, Jr. (Rojas), the former Vice-Mayor of Ajuy, Iloilo, wa shot and killed in Sitio Casamata, Iloilo. Rojas was jogging with Armando Nacional (Nacional) when they met two assailants riding a motorcycle, Rojas was shot several times resulting in his death. Nacional later testified that Edgar Cordero (Cordero) shot Rojas while Dennis Cartagena (Cartagena) drove the motorcycle.[3]

On 26 May 2008, the Ajuy Municipal Police Officer filed a Complaint for Murder against Cordero and Cartagena in the Iloilo Provincial Prosecutor's Office, which was docketed as I.S. No. 2008-835.[4]

After examining the testimonies of additional witnesses, the Ajuy Municipal Office filed a second complaint on 2 June 2008 which included Vicente Espinosa *alias* "Bulldog" and Lindsey Buenavista *alias* "Bebe" (respondents).

Espinosa filed his Counter-Affidavit on 27 June 2008, denying any involvement in the killing.[5] In his Counter-Affidavit dated 30 June 2008, Buenavista also claimed that he did not participate in the killing.[6]

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[2] *Id*. at 72-74. Penned by Justice Eduardo B. Peralta with Justices Edgardo L. Delos Santos and Victoria Isabel A. Paredes, concurring.

[3] *Id*. at 18.

[4] *Id.* at 19.

[5] *Rollo* (G.R. No. 199237), pp. 164-165.

[6] *Id*. at 166-169.

On 11 July 2008, Renyl Iran, who claimed to be a former bodyguard/helper of Espinosa, executed an affidavit stating that he personally heard Cartagena, Buenavista and other members of Espinosa's staff planning the murder of several Ajuy government officials. According to Iran:

> [O]n May 27, 2007, at around 9:00 in the evening, [he] was inside the compound serving beer to Vicente Espinosa, "Aldan" Padilla and "Eddie" Aguilon (Barangay Kagawad and Barangay Secretary of Barangay Lanjangan, Ajuy Iloilo). Also drinking with them were Dennis Cartagena *alias* "Totong" and Lindsey Buenavista *alias* "Bebe" who acted as bodyguards of Vicente Espinosa during the last elections. Vicente Espinosa, "Aldan" Padilla and "Eddie" Aguillon were talking about last elections and how they could get even at the group of Mayor Juancho Alvarez and Vice-Mayor Ramon Rojas, Jr. Then, as [Iran] was leaving their table after serving them beer, [he] clearly heard Vicente Espinosa telling "Aldan" Padilla and "Eddie" Aguillon "*Ipatumba naton sila. Unahon ta si* Vice Ramon" (Let's eliminate them. Let's get Vice Ramon first.) Then [Iran] [also] heard Vicente Espinosa [say] "*Ti ano Bebe kag* Totong, *kaya nyo si* Vice" (How about it "Bebe" and "Patong," can you do it to Vice?);
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> x x x x x x x x x
>
> In the evening of June 30, 2007 at the compound, [Iran] noticed that Vicente Espinosa was angry. Then suddenly he called me and asked "*Kaya mo patyon si Juancho*?" (Can you kill Juancho?), to which [Iran] answered "*Noy, maluoy ka man, pangita-i lang sang iban dira. Indi ko kaya*." (Noy, have pity, just look for other persons. I can't do it.) Vicente Espinosa then ordered me to [light] some "*pwitis*" (pyrotechnic rockets) and aim them at the house of Juancho Alvarez which is just 200 meters away from the compound. As [Iran fired] the rockets towards the house of Juancho Alvarez x x x Vicente Espinosa was laughing and enjoying[.][7]

The Iloilo Provincial Prosecutor's Office recommended the filing of an Information for Murder against Cordero and Cartagena, but dismissed the case against respondents in its Resolution dated 12 August 2008. The Iloilo Provincial Prosecutor's Office found that there was no probable cause against respondents:

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[7] *Id*. at 180-181.

The evidence submitted falls short of the quantum of proof required for a finding of probable cause against Vicente Espinosa and Lindsey Buenavista. Indeed, it is painful and heartbreaking for the Rojas family, however, the law must at all times be sustained. All doubts must be resolved in favor of the accused. The possibility of the guilt of Vicente Espinosa and Lindsey Buenavista is not being ruled out, but the principle that [the] "insufficiency of evidence must be resolved consistent with the theory of innocence.[8]

Thus, the private complainants filed a petition for review with the Secretary of Justice on 25 August 2008. The petition claimed that the Iloilo Provincial Prosecutor's Office gravely erred in:

1. resolving the preliminary investigation based on degree of "proof beyond reasonable doubt" rather than degree of proof to establish "probable cause" against the appellees;
2. holding that the evidence of the appellants are purely circumstantial or indirect evidence;
3. refusing to give due credence to the straighforward, candid, positive and, most importantly, unrebutted declarations of the appellants' witnesses, manifesting a clear bias in favor of appellees Vicente Espinosa and Lindsey Buenavista; and
4. finding no probable cause against appellees Vicente Espinosa and Lindsey Buenaventura.[9]

Meanwhile, the Information for Murder was filed with the Regional Trial Court, Branch 66, Barotac Viejo, Iloilo (RTC-Branch 66), which was docketed as Criminal Case No. 2008-4303.[10] The RTC-Branch 66 also issued warrants of arrest against Cordero and Cartagena.

On 29 August 2008, a group of armed assailants shot Cartagena and Cordero. While Cartagena survived, Cordero died of gunshot wounds. Cartagena was arrested and turned over to the custody of Col. Ricardo Delapaz, Iloilo Philippine National Police Provincial Director. Thereafter, he was brought back to Iloilo City.

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[8] *Id.* at 207.

[9] *Id.* at 213.

[10] *Rollo* (G.R. No. 199070), p. 20.

In his sworn statement[11] dated 4 September 2008, Cartagena admitted that he was involved in the killing of Rojas. Cordero shot Rojas while Cartagena drove the motorcycle. He also claimed that Espinosa paid him and Cordero for killing Rojas. Cartagena stated:

21. Can you tell me the reason why you and Edgar Cordero shot Vice Mayor Rojas?
Because Vicente "Etik" Espinosa *alias* "Bulldog" of Barangay Lanjagan, Ajuy, Iloilo paid us[.]

22. Do you really know Vicente "Etik" Espinosa *alias* "Bulldog"?
Yes. Because I was one of his bodyguards during the elections in May 2007.

23. You said that you are only one of his bodyguards. [D]o you know his bodyguards?
Yes. They are Rey Peña, Lindsey Buenavista *alias* "Bebe" and certain *alias* "Remy".

x x x x x x x x x

26. When did Vicente "Etik" Espinosa tell you to murder Mayor Rojas?
Sometime after the end of the election[s] in May 2007.[12]

Cartagena also claimed that it was Buenavista who shot and killed Cordero on 29 August 2008.[13]

While the petition for review filed by the private complainants was pending, former Secretary of Justice Raul M. Gonzales issued Department Order No. 360 on 14 May 2009 which created a panel of state prosecutors acting as Provincial Prosecutor to conduct a new preliminary investigation of the Complaint for Murder filed against Cordero and Cartagena.[14]

In its Resolution dated 9 October 2009, the panel found probable cause of Murder against respondents. Espinosa then filed a Motion for Reconsideration.

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[11] *Id*. at 75-80.

[12] *Id*. at 77.

[13] *Id*. at 80.

[14] *Id*. at 21.

On 12 October 2009, this Court granted petitioners' Urgent Petition for Change of Venue in Criminal Case No. 2008-4303 and ordered the immediate transfer of the case from RTC-Branch 66 to the RTC-Branch 38, Iloilo City (RTC-Branch 38).[15]

On 24 February 2010, former Secretary of Justice Agnes VST Devanadera dismissed the private complainants' Petition for Review. The Resolution stated that in view of the panel's finding that there is probable cause to charge respondents with Murder, the Petition for Review was not moot.

In accordance with the Resolution dated 24 February 2010, then Acting Secretary of Justice Alberto C. Agra issued Department Order No. 409 directing the Regional State Prosecutor of Iloilo, who was designated as Acting Provincial Prosecutor, to "file an amended information for murder in Criminal Case No. 2008-4303, entitled *People of the Philippines vs. Dennis Cartagena and Edgar Cordero*."[16] Thus, on 14 July 2010, the Regional State Prosecutor, Region VI, filed with the RTC-Branch 38 and Amended Information for Murder in Criminal Case No. 2008-4303.

On 16 July 2010, Espinosa filed a Motion for Judicial Determination of Probable Cause.[17] According to Espinosa:

> x x x the sworn statement of Dennis Cartagena x x x is only admissible against Cartagena and not against his co-accused or co-respondent. x x x[T]he exclusionary rule on admission and on confession as provided for under Section[s] 30 and 33 of the Rules of Court can be invoked during the preliminary investigation and reinvestigation of a case.
>
> x x x x x x x x x
>
> x x x [T]he panel of investigators overstretched their authority and showed manifest partiality and bias, when in resolving the Motion for Reconsideration filed by respondent Espinosa, they took in consideration the affidavits of Renyl Iran and Fidel Laverga. Said

[15] *Id*. at 21-22.

[16] *Id*. at 23.

[17] *Rollo* (G.R. No. 199237), pp. 327-344.

affidavits were never submitted to the Panel by either party to form part of their evidence. The affiants were not even called to affirm their statements.[18]

Judge Florian D. Abalajon (public respondent) issued the questioned Order dated 12 August 2010 dismissing the Amended Information against respondents. According to the RTC, "standing alone, the Extra-Judicial Confession of accused Dennis Cartagena as against his co-accused Vicente Espinosa and Lindsey Buenavista is inadmissible and considered hearsay against them."[19]

The RTC applied the *res inter alios acta* rule under Section 30, Rule 130 of the Rules of Court.

Admission by a Conspirator – The act or declaration of a conspirator relating to the conspiracy and during its existence, may be given in evidence after the conspiracy is shown by evidence other than such act of declaration.

The RTC explained that:

x x x In order that the admission of a conspirator may be received against his or her co-conspirators, it is necessary that:

a.) The conspiracy must first be proved by evidence other than the admission itself.
b.) The admission relates to the common object; and
c.) It has been made while the declarant was engaged in carrying out the conspiracy.

x x x x x x x x x

Considering that the extrajudicial confession of accused Dannis Cartagena is not corroborated by independent evidence, it is therefore inadmissible and it would be unfair to hold accused Vicente Espinosa and Lindsey Buenavista for trial. Cartagena's confession is binding only on him and is not admissible against his co-accused Vicente Espinosa and Lindsey Buenavista. By the rule, his confession is considered hearsay against his x x x co-accused.[20]

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[18] *Id.* at 332-334.

[19] *Rollo* (G.R. No. 199237), p. 441.

[20] *Id.* at 441-442.

Petitioner and private complainants filed an Urgent Motion for Inhibition on 26 August 2010 alleging that public respondent was "utterly one-sided" in favor of the accused and "oppressively biased against the complainants.[21] A Motion for Reconsideration was later filed on 27 August 2010.

The RTC denied the Motion for Reconsideration in its Order dated 7 October 2010. The dispositive portion thereof reads:

> WHEREFORE, premises considered, the motion for reconsideration, the motion for inhibition and motion for expunge are herey DENIED, respectively.
>
> HOWEVER, in order to discontinue the lack of faith and trust of complainants private and public, and petitioner on the impartiality and objectivity of the Presiding Judge, he voluntarily inhibits himself and further hearing the case following the opinion of the Supreme Court that "at the very first sign of lack of faith and trust in his actions, whether well-grounded or not, the judge has no other alternative but to inhibit himself from the case." (*Gutang vs. Court of Appeals*, G.R. No. 124760, July 8, 1998, 292 SCRA 76). On the other hand, the Supreme Court cannot tolerate acts of litigants who for any conceivable reason seek to disqualify a judge for their own purposes under a plea of bias, hostility, prejudice or prejudgment." (*People v. Serrano*, G.R. No. L-44712, October 28, 1991, 203 SCRA 171)
>
> Let these cases be therefore returned/forwarded to the Office of the Clerk of Court for their proper disposition by the Executive Judge.
>
> SO ORDERED.[22]

The Order was received by private complainants on 14 October 2010.[23] Then, Criminal Case No. 2008-4303 was re-raffled to RTC-Branch 24, Iloilo City (RTC-Branch 24).

Aggrieved, the private complainants sought to file a petition for *certiorari* under Rules 65. According to them, they coordinated with the Office of the Regional State Prosecutor, Region VI,

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[21] *Id.* at 510.

[22] *Id.* at 507-508.

[23] *Id.* at 117.

Iloilo City (Regional State Prosecutor) and drafted the petition for *certiorari*. As evidenced by an Indorsement dated 25 November 2010, the Regional State Prosecutor forwarded the draft of the petition for *certiorari* to the Office of the Prosecutor General Claro A. Arellano. On 30 November 2010, counsel for private complainants Atty. Mehelinda A. Penetrante (Atty. Penetrante) hand-delivered the: (a) Indorsement; (b) draft of the Petition for *Certiorari*; (c) original pages containing the verification and certification against forum-shopping executed on 26 November 2010 by private complainant Ramon Caesar T. Rojas; and (d) original copies containing the signatures of the private prosecutors.[24]

Private complainants claimed that the documents were transmitted to the Office of Hon. Anselmo I. Cadiz, Solicitor General, as evidenced by a letter dated 30 November 2010. The letter erroneously state that the deadline for filing was 14 December 2010, instead of 13 December 2010. The letter was received by the Office of the Solicitor General (OSG) on 3 December 2010.[25] According to the OSG, the case was assigned to the handling solicitors on 8 December 2010.

On 14 December 2010, the OSG filed before the CA-Cebu a petition for *certiorari* under Rule 65. The OSG alleged that public respondent committed grave abuse of discretion amounting to lack or excess of jurisdiction:

I. x x x when he ordered the dismissal of [the] amended information against accused Espinosa and Buenavista despite the [extrajudicial] confession of their co-accused Dennis Cartagena and corroborating [evidence] on record establishing their participation in the crime charged;
II. x x x in holding that the [extrajudicial] confession of Cartagena is inadmissible x x x under Section 30 of Rule 130 of the Rules of Court;
III. x x x for excluding the extrajudicial confession in his determination of the assailed orders.[26]

[24] *Id.* at 42-43.

[25] *Id.* at 43.

[26] *Rollo* (G.R. No. 199070), p. 178.

Private complainants claimed that they received a copy of the petition sometime around 23 December 2010. The noticed that on Page 39 of the Petition, the names of respondents were not listed as one of the parties furnished with a copy of the pleading. Thus, Atty. Penetrante informed the OSG of the omission in a letter dated 12 January 2011.[27]

The OSG, through Assistant Solicitor General (OSG) John Emmanuel F. Madamba and Associate Solicitor (AS) Melissa A. Santos, assured Atty. Penetrante that respondents were furnished with copies of the petition. However, "the Affidavit of Service was attached to the original of the petition that was filed with the Court of Appeals."[28] The OSG also stated that private complainants would be furnished with the proof of service to the private respondents after receipt of the registry cards from the post office.

The Ruling of the Court of Appeals

In its Resolution[29] dated 21 January 2011, the CA-Cebu dismissed the petition. According to the court *a quo*:

> A perusal of the Petition revealed there were congenital infimities:
>
> 1. the Petition was filed one day after the 60-day regl[e]mentary period for filing the Petition for *Certiorari*, in violation of Section 4, Rule 65 of the 1997 Rules of Civil Procedure.
> 2. there was no proper proof of service of the Petition to the court *a quo* and to private respondents. Certainly, registry receipts can hardly be considered sufficient proof of receipt by the addressee of registered mail[;]
> 3. the Petition failed to incorporate therein a written explanation why the preferred personal mode of filing and service as mandated under Section 11, Rule 13 of the 1997 Rules of Civil Procedure was not availed of. Verily, the Explanation referred to '. . . Motion for Extension . . .;
> 4. there was no competent evidence regarding petitioners' identity on the attached Verifications and Certifications Against Forum

[27] *Rollo* (G.R. No. 199237), p. 44.

[28] *Id*.

[29] *Rollo* (G.R. No. 199070), pp. 69-71.

Shopping as required by Section 12, Rule II of the 2004 Rules on Notarial Practice; and

5. the Notarial Certificate in the Verification and Certification Against Forum Shopping of private complainant did not contain the office address of the notary public, in violation of Section 2(c), Rule VIII of the 2004 Rules on Notarial Practice.[30]

The petitioner and private complainants each filed a petition for review before this Court.

The Issue

The basic issue raised in both petitions is the propriety of the CA-Cebu's dismissal of the OSG's petition for *certiorari* based on procedural lapses.

The Ruling of this Court

We note that the OSG failed to follow procedural rules. First, it admitted that it erroneously computed the deadline for filing the petition. Second, the respondents were furnished a copy of the petition after its filing. Third, the Explanation required under Section 11, Rule 13 referred to a Motion for Extension and not a Petition for *Certiorari*.

The CA-Cebu dismissed the Petition for *Certiorari* because of these procedural errors. Petitioner and private complainants claim that the rigid technical rules should have been relaxed by the CA-Cebu in view of the circumstances of the case.

Courts are constrained to adhere to procedural rules under the Rules of Court. Section 6 of Rule 1, however, grants courts leeway in the interpreting and applying rules:

Sec. 6. *Construction* – These Rules shall be liberally construed in order to promote their objective of securing a just, speedy and inexpensive disposition of every action and proceeding.

However, we should point out that courts are not given *carte blanche* authority to interpret rules liberally. In *Building Care Corporation v. Macaraeg*,[31] we pointed out that:

[30] *Id*. at 70-71.

[31] G.R. No. 198357, 10 December 2012, 687 SCRA 643.

x x x the resort to a liberal application, or suspension of the application of procedural rules, must remain as the exception to the well-settled principle that rules must be complied with for the orderly administration of justice.[32]

The first procedural error was the failure to file the petition within the reglementary period. Section 4 of Rule 65 of the Rules of Court, as amended under A.M. No. 07-7-12-SC, provides a strict deadline for the filing of petitions for *certiorari*;

SECTION 4. *When and Where to File the Petition*. — The petition shall be filed not later than sixty (60) days from notice of the judgment, order or resolution. In case a motion for reconsideration or new trial is timely filed, whether such motion is required or not, the petition shall be filed not later than sixty (60) days counted from the notice of the denial of the motion.

x x x x x x x x x

We deleted the clause in Section 4, Rule 65 that permitted extensions of the period to file petitiones for *certiorari*, since sixty (60) days is more than ample time to sufficiently prepare for filing.[33]

However, in *Republic v. St. Vincent de Paul Colleges, Inc.*,[34] we allowed a liberal interpretation of the foregoing rule:

Nevertheless, in the more recent case of *Domdom v. Sandiganbayan*, we ruled that the deletion of the clause in Section 4, Rule 65 by A.M. No. 07-7-12-SC did not, *ipso facto*, make the filing of a motion for extension to file a rule 65 petition absolutely probihited. We held in *Domdom* that if absolute proscription were intended, the deleted portion could have just simply been reworded to specifically prohibit an extension of time to file such petition. Thus, because of the lack of an express prohibition, we held that motions for extension may be allowed, subject to this Court's sound discretion, and only under exceptional and meritorious cases.

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[32] *Id*. at 647.

[33] *Republic v. St. Vincent de Paul Colleges, Inc*., G.R. No. 192908, 22 August 2012, 678 SCRA 738.

[34] *Id*.

Indeed, we have relaxed the procedural technicalities introduced under A.M. No. 07-7-12-SC in order to serve substantial justice and safeguard strong public interest.[35] (Emphasis supplied)

The 60-day period may be extended under any of the circumstances provided in the earlier case of *Labao v. Flores*,[36] The recognized exceptions are:

1. most persuasive and weighty reasons;
2. to relieve a litigant from an injustice not commensurate with his failure to comply with the prescribed procedure;
3. good faith of the defaulting party by immediately paying within a reasonable period of time from the time of the default;
4. the existence of special or compelling circumstances;
5. the merits of the case;
6. a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules;
7. a lack of any showing that the review sought is merely frivolous and dilatory;
8. the other party will not be unjustly prejudiced thereby;
9. fraud, accident, mistake or excusable negligence without appellant's fault;
10. peculiar legal ang equitable circumstances attendant to each case;
11. in the name of substantial justice and fair play;
12. importance of the issues involved; and
13. exercise of sound discretion by the judge guided by all the attendant circumstances. Thus, there should be an effort on the part of the party invoking liberality to advance a reasonable or meritorious explanation for his/her failure to comply with the rules.[37]

In the instant case, private complainants had to transmit documents to the OSG. Records clearly show that they were able to do so promptly. On 30 November 2010, counsel for private complainants Atty. Penetrante submitted to the Office of the Prosecutor General the draft petition for *certiorari*, the verification and certification against forum shopping, the original copies containing the signatures of the private prosecutors, and

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[35] *Id*. at 749.

[36] G.R. No. 187984, 15 November 2012, 634 SCRA 723.

[37] *Id*. at 732.

the certified copies of the annexes.[38] These documents were received by the OSG on 3 December 2010 only.

Given the circumstances, we hold that the CA-Cebu should have applied the rules liberally and excused the belated filing.

We now discuss the remaining procedural errors. Respondents were furnished a copy of the petition after it was filed. According to respondents, this violated Section 1, Rule 65 and Section 3, Rule 46 of the Rules of Court. The CA-Cebu also found that the petition lacked a written explanation as required under Section 11, Rule 13 of the Rules of Court. The Explanation attached to the filed petition referred to a Motion for Extension and not a Petition for *Certiorari*. The CA-Cebu ruled that there was no proper proof of service of the petition to the court *a quo* and to private respondents. It held that "registry receipts can hardly be considered sufficient proof of receipt by the addressee of registered mail."

Section 13 of Rule 13 of the Rules of Court states that for pleadings served through registered mail, proof or service shall be made through an affidavit of the person mailing the pleading, and the registry receipts issued by the post office. The OSG was remiss in its duties as counsel when it failed to serve a copy to respondents before filing of the petition. As regards the Explanation, it is clear that the erroneous referral to a "Motion for Extension" instead of a Petition for *Certiorari* was just a mere typographical error.

While we acknowledge that the OSG committed glaring errors, we deem it unjust to penalize private complainants for the OSG's carelessness. It is important to point out that private complainants quickly informed the OSG of the oversight:

> On or about December 23, 2010, the private prosecutors in Iloilo City received by registered mail copies of the x x x petition for *Certiorari* signed by AS Melissa A. Santos and Assistant Solicitor General John Emmanuel F. Madamba which appeared to have been filed with the Honorable Court through registered mail on December 14, 2010;

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[38] *Rollo* (G.R. No. 199237), pp. 42-43.

It was then that the private prosecutors noticed on Page 39 of the petition under the "Copy furnished": portion that the names of the private respondents Vicente Espinosa and Lindsey Buenavista were not among the list of parties who were furnished with copies of the petition as required by Rule 65. The copies sent to the private prosecutors also did not include a copy of the OSG's Affidavit of Service. Thereupon, Atty. Penetrante in a letter dated January 12, 2011 brought this matter to the attention of the OSG thru ASG John Emmanuel F. Madamba as AS Melissa A. Santos x x x.

Thereafter, in a reply letter dated January 14, 2011 ASG Madamba and AS Santos informed Atty. Penetrante (a) that they have actually furnished the private respondents with copies of the petition but the Affidavit of Services was attached to the original of the petition that was filed with the [CA-Cebu], and (b) that they will thereafter furnish her with the proof of service to private respondents as soon as they have received the registry return receipts from the post office. x x x."[39]

As correctly pointed out by private complainants:

Indeed the actual date of filing of the petition as well as compliance with the rest of the formal and procedural requirements of a petition for *Certiorari* under Rule 65, namely — OSG's verification and certification on non-forum shopping, the "Copy Furnished" portion showing service of copies of the petition on the public and private respondent[s] by registered mail and the required "Explanation" why personal service of the petition on the respondents was not resorted to — were all in the hands of the OSG. [These] were beyond the control or intervention of the private petitioners and private prosecutors. After all, the OSG [is the] chief legal counsel of the State and the People of the Philippines in the Court of Appeals and the Supreme Court.[40]

It would be unjust to penalize private complainants for the negligence of the OSG. In *Multi-Trans Agency Phils., Inc. v. Oriental Assurance Corp.*,[41] we discussed the general rule and

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[39] *Id*. at 44.

[40] *Id.* at 46-47.

[41] 608 Phil. 478 (2009)

exceptions with respect to the effect of counsel's negligence on a client:

> x x x [W]hile it is settled that negligence of counsel binds the client, this rule is not without exception. In cases where reckless or gross negligence of counsel like in this case deprives the client due process of law, or when the application would result in outright deprivation of the client's liberty property, or where the interest of justice so requires, relief is accorded to the client who suffered by reason of the lawyer's gross or palpable mistake or negligence.[42]

The case of *Building Care* involved an appeal which was filed out of time because of counsel's negligence. We disallowed the belated filing because

> x x x respondent not her former counsel gave any explanation or reason citing extraordinary circumstances for her lawyer's failure to abide by the rules for filing an appeal. Respondent merely insisted that she had not been remiss in following up her case with said lawyer.[43]

The circumstances in *Building Care* are clearly different from the facts of this case. In the present case, there was a tranfer of documents from private complainant's original counsel, Atty. Penetrante to the OSG. This Court has always recognized the fact that the OSG has a heavy workload. Further, the OSG only received the documents on 3 December 2010 despite prompt submission of the required documents.

WHEREFORE, the Resolutions of the Court of Appeals-Cebu dated 21 January 2011 and 3 October 2011 are hereby **SET ASIDE**. The case is **REMANDED** to the Court of Appeals which is **DIRECTED** to reinstate and give due course to the petition for review in CA-G.R. SP No. 05617 and to decide the same on the merits.

SO ORDERED.

Brion, del Castillo, Perez, and *Perlas-Bernabe, JJ.*, concur.

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[42] *Id.* at 492-493.

[43] G.R. No. 198357, 10 December 2012, 687 SCRA 643, 648.

SECOND DIVISION

[G.R. No. 199442. April 7, 2014]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **FRANCISCO ABAIGAR,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; THE ASSESSMENT OF THE CREDIBILITY OF WITNESSES IS WITHIN THE PROVINCE AND EXPERTISE OF THE TRIAL COURT.— It is settled that the assessment of the credibility of witnesses is within the province and expertise of the trial court. In this case, we find no cogent reason to depart from the findings of the trial court. The court below categorically found that Relecita had no ill motive to testify against appellant; she "has no reason to impute on him the heinous crime of murder had she not witnessed the actual killing of the victim." Similarly, the appellate court found Relecita to have "positively identified the appellant as the perpetrator of the crime." Also, the failure of Relecita to warn the victim of the appellant's impending attack should not be taken against her. Neither should it be taken as a blemish to her credibility.

2. CRIMINAL LAW; QUALIFYING CIRCUMSTANCES; TREACHERY; PRESENT WHERE THE VICTIM WAS SHOT FROM BEHIND BY THE ACCUSED HITTING HIM AT THE BACK OF HIS HEAD; TREACHERY QUALIFIES THE KILLING TO MURDER IN CASE AT BAR; ***RECLUSION PERPETUA,*** **IMPOSED.—** We agree with the trial court and the Court of Appeals that treachery attended the commission of the crime. Records show that the victim was about to enter his house when suddenly he was shot from behind by the appellant hitting him at the back of his head. The victim suffered five gunshot wounds, four of which proved fatal. Considering the qualifying circumstance of treachery, appellant was correctly found guilty of murder; there being no aggravating circumstance other than the qualifying circumstance of treachery, both the trial court and the appellate court correctly sentenced appellant to *reclusion*

perpetua pursuant to Article 248 of the Revised Penal Code. However, he is not eligible for parole.

3. ID.; MURDER; CIVIL LIABILITY OF ACCUSED-APPELLANT. — As regards the damages awarded, we note that the trial court did not award actual damages. In lieu thereof, the heirs of the victim are entitled to an award of temperate damages in the amount of ₱25,000.00 "as it cannot be denied that the heirs of the [victim] suffered pecuniary loss although the exact amount was not proved." "This award is adjudicated so that a right which has been violated may be recognized or vindicated, and not for the purpose of indemnification." Exemplary damages must likewise be increased to ₱30,000.00 in line with prevailing jurisprudence. In addition, all damages awarded shall earn interest at the rate of 6% *per annum* from finality of this judgment until fully paid.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

R E S O L U T I O N

DEL CASTILLO, *J.*:

An Information[1] was filed charging appellant Francisco Abaigar with the crime of murder, the accusatory portion of which reads:

That on or about the 11th day of July 2001, at about 9:00 o'clock in the evening, at Barangay Rosalim, Municipality of San Jorge, Province of Samar, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused did then and there willfully, unlawfully and feloniously, without any justifiable cause, with intent to kill, and by means of treachery and evident premeditation, attack, assault and use personal violence upon the person of JOSEPH GABUYA by shooting him with the use of a homemade shotgun locally known as "Bardog", which the accused

[1] Records, pp. 4-5.

had conveniently provided himself for the purpose, hitting the victim's left side of the face and behind the head, thereby inflicting upon him serious and mortal wounds which were the direct and immediate cause of his death.

CONTRARY TO LAW.[2]

During his arraignment on August 4, 2004, appellant pleaded not guilty to the charge.[3]

On December 6, 2007, the trial court rendered its Judgment[4] finding appellant guilty as charged. The dispositive portion of the Judgment reads:

WHEREFORE, accused Francisco Abaigar is hereby found GUILTY beyond reasonable doubt of the crime of Murder and is hereby meted the penalty of *Reclusion Perpetua*.

Said accused shall also indemnify the heirs of deceased Joseph Gabuya death indemnity in the amount of Php75,000.00, moral damages of Php50,000.00 and exemplary damages in the amount of Php20,000.00.

In line with Sec. 5, Rule 114 of the Rules on Criminal Procedure, the Warden of the Sub-Provincial Jail, Calbayog City, is hereby directed to immediately transmit the living body of accused Francisco Abaigar to the New Bilibid Prison, Muntinlupa City, Metro Manila, where he may remain to be detained.

In the service of his sentence he shall be credited for the period he was under preventive detention, provided he has previously expressed his written conformity to comply with the discipline, rules and regulations by the detention center otherwise he shall be entitled to only 4/5 thereof pursuant to Article 29 of the Revised Penal Code as amended.

SO ORDERED.[5]

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[2] *Id*. at 4.

[3] *Id*. at 62.

[4] *Id*. at 306-312; penned by Presiding Judge Rosario B. Bandal.

[5] *Id*. at p. 312.

The trial court lent credence to the testimony of prosecution witness Relecita del Monte (Relecita) that at about 9 o'clock in the evening of July 11, 2001, at a distance of about 3½ meters, she saw appellant shoot Joseph Gabuya (Gabuya) from behind hitting the victim at the back of his head. The trial court disregarded appellant's denial and alibi. It found incredulous appellant's claim that he returned to sleep immediately after hearing bursts of gunshots near his house and his disavowal of any knowledge about the death of Gabuya whose house is just 30 arms length away from his house. His flight after the incident was considered an indication of guilt. The trial court also found that treachery attended the killing as the victim was merely in the act of opening the front door of his house without any inkling of the impending attack coming from behind.

Aggrieved, appellant appealed before the Court of Appeals. In a Decision[6] dated June 22, 2010, the appellate court affirmed in full the Judgment of the trial court, *viz*:

> WHEREFORE, the Judgment of the Regional Trial Court (RTC), Branch 41, of Gandara, Samar, in Criminal Case No. 02-0100 finding accused-appellant, Francisco Abaigar, guilty beyond reasonable doubt of the crime of Murder is AFFIRMED *in toto*.
>
> SO ORDERED.[7]

Hence, this appeal.

In a Resolution[8] dated January 25, 2012, we required both parties to submit their Supplemental Briefs but they opted to adopt the briefs they filed before the Court of Appeals.

Appellant basically argues that the trial court and the Court of Appeals erred in lending credence to the testimony of eyewitness Relecita. Appellant claims that Relecita could have forewarned

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[6] CA *rollo*, pp. 72-83; penned by Associate Justice Ramon A. Cruz and concurred in by Associate Justices Pampio A. Abarintos and Myra V. Garcia-Fernandez.

[7] *Id*. at 82.

[8] *Rollo*, pp. 27-28.

the victim of his presence if indeed Relecita saw him in the vicinity; and that it was improbable that Relecita could see him considering the poor lighting condition of the place.

We are not persuaded.

It is settled that the assessment of the credibility of witnesses is within the province and expertise of the trial court. In this case, we find no cogent reason to depart from the findings of the trial court. The court below categorically found that Relecita had no ill motive to testify against appellant; she "has no reason to impute on him the heinous crime of murder had she not witnessed the actual killing of the victim."[9] Similarly, the appellate court found Relecita to have "positively identified the appellant as the perpetrator of the crime."[10] Also, the failure of Relecita to warn the victim of the appellant's impending attack should not be taken against her. Neither should it be taken as a blemish to her credibility.

As regards the visibility, the appellate court correctly ruled that the distance between Relecita and appellant, the light coming from a 50-watt bulb on the street post about eight meters away from the place where the victim was shot, the light coming from passing vehicles, and the light coming from the kerosene lamp in the house of the appellant are enough to illuminate the place and for Relecita to positively identify the appellant.

We agree with the trial court and the Court of Appeals that treachery attended the commission of the crime. Records show that the victim was about to enter his house when suddenly he was shot from behind by the appellant hitting him at the back of his head. The victim suffered five gunshot wounds, four of which proved fatal.

Considering the qualifying circumstance of treachery, appellant was correctly found guilty of murder; there being no aggravating circumstance other than the qualifying circumstance of treachery, both the trial court and the appellate court correctly sentenced

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[9] Records, p. 310.

[10] CA *rollo*, p. 78.

appellant to *reclusion perpetua* pursuant to Article 248 of the Revised Penal Code. However, he is not eligible for parole.[11]

As regards the damages awarded, we note that the trial court did not award actual damages. In lieu thereof, the heirs of the victim are entitled to an award of temperate damages in the amount of ₱25,000.00 "as it cannot be denied that the heirs of the [victim] suffered pecuniary loss although the exact amount was not proved."[12] "This award is adjudicated so that a right which has been violated may be recognized or vindicated, and not for the purpose of indemnification."[13] Exemplary damages must likewise be increased to ₱30,000.00 in line with prevailing jurisprudence. In addition, all damages awarded shall earn interest at the rate of 6% *per annum* from finality of this judgment until fully paid.

WHEREFORE, the appeal is **DISMISSED**. The June 22, 2010 Decision of the Court of Appeals in CA-G.R. CR-HC No. 00866 which affirmed in full the December 6, 2007 Judgment of the Regional Trial Court of Gandara, Samar, Branch 41, finding appellant Francisco Abaigar guilty beyond reasonable doubt of the crime of murder is **AFFIRMED** with **MODIFICATIONS** that appellant is without eligibility for parole; he is ordered to pay the heirs of the victim the amount of ₱25,000.00 as temperate damages; and the award of exemplary damages is increased to ₱30,000.00. In addition, interest on all damages awarded is imposed at the rate of 6% *per annum* from date of finality of this judgment until fully paid.

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[11] Section 3 of Republic Act No. 9346 (An Act Prohibiting the Imposition of Death Penalty in the Philippines) provides: Person convicted of offenses punished with *reclusion perpetua,* or whose sentences will be reduced to *reclusion perpetua*, by reason of this Act, shall not be eligible for parole under Act No. 4180, otherwise known as the Indeterminate Sentence Law, as amended.

[12] *People v. Lucero*, G.R. No. 179044, December 6, 2010, 636 SCRA 533, 543.

[13] *People v. Beduya*, G.R. No. 175315, August 9, 2010, 627 SCRA 275, 289, citing *People v. Carillo*, 388 Phil. 1010, 1025 (2000).

SO ORDERED.

Carpio (Chairperson), Brion, Perez, and *Perlas-Bernabe, JJ.*, concur.

SECOND DIVISION

[G.R. No. 199549. April 7, 2014]

CIVIL SERVICE COMMISSION and DEPARTMENT OF SCIENCE AND TECHNOLOGY, Regional Office No. V, *petitioners, vs.* **MARILYN G. ARANDIA,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; INSUBORDINATION; DEFINED; FAILURE OF THE EMPLOYEE TO PROMPTLY ACT ON THE LAWFUL ORDER OF A SUPERIOR OFFICER CONSTITUTES INSUBORDINATION.— Insubordination is defined as a refusal to obey some order, which a superior officer is entitled to give and have obeyed. The term imports a willful or intentional disregard of the lawful and reasonable instructions of the employer. In this case, the respondent committed insubordination when she failed to promptly act on the June 16, 2000 memorandum issued by her superior, Regional Director Nepomuceno, reminding her of her duties to immediately turn-over documents to and exchange room assignments with the new Administrative Officer-Designate, Engr. Lucena. The subject memorandum was a lawful order issued to enforce Special Order No. 23, s. of 2000 reassigning the respondent from Administrative to Planning Officer, and which warranted the respondent's obedience and compliance.

2. ID.; ID.; ID.; ID.; INSUBORDINATION IS A LESS GRAVE OFFENSE PUNISHABLE BY SUSPENSION FROM

SERVICE; PENALTY OF FINE IMPOSED, IN LIEU OF SUSPENSION, DUE TO RESIGNATION OF THE ERRING EMPLOYEE. — Insubordination is a less grave offense punishable by suspension of one month and one day to six months. Since we merely found the respondent guilty of insubordination in not promptly complying with the memoranda for the turn-over of documents, we find the suspension of one month and one day as sufficient penalty for her offense. Considering, however, that respondent is no longer with DOST-V and is now working abroad, we can no longer impose on her the penalty of suspension from service. In lieu thereof, we impose on the respondent the penalty of a fine of one month salary, which amount is to be deducted from her retirement benefits or from whatever benefits, if any, that she is still entitled to receive after her resignation. If there is none, the respondent is ordered to pay the fine directly to and within the period to be directed by the CSC.

APPEARANCES OF COUNSEL

The Solicitor General for petitioners.
Ernesto M. Alarcon for respondent.

D E C I S I O N

BRION, *J.*:

Assailed in this petition for review on *certiorari*[1] are the decision[2] dated June 30, 2011 and the resolution[3] dated November 25, 2011 of the Court of Appeals (*CA*) in CA-G.R. SP No. 100422.

The CA dismissed the administrative complaint for gross insubordination, gross neglect of duty, conduct grossly prejudicial

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[1] Under Rule 45 of the Rules of Court.

[2] *Rollo,* pp. 13-25; Penned by Associate Justice Japar B. Dimaampao, with Presiding Justice Andres B. Reyes, Jr. and Associate Justice Jane Aurora C. Lantion, concurring.

[3] *Rollo,* pp. 80-81.

to the best interest of public service, grave misconduct and gross inefficiency in the performance of duty filed against respondent Marilyn G. Arandia, then Administrative Officer V of the Department of Science and Technology Regional Office No. V (*DOST-V*) in Rawis, Legazpi City.

The Facts

In March 2000, Eriberta Nepomuceno, Regional Director of DOST-V, filed an administrative complaint[4] for gross insubordination, gross neglect of duty, conduct grossly prejudicial to the best interest of public service, grave misconduct and gross inefficiency in the performance of duty against the respondent with the Civil Service Commission Regional Office No. V (*CSCRO-V*), Legazpi City. Nepomuceno alleged that the respondent refused to sign, without justifiable cause, documents for the payment of certain miscellaneous and travelling expenses, phone bills, and the release of salaries and allowances of Nepomuceno and other employees of DOST-V.

In her answer[5] to the complaint, the respondent justified her refusal to sign and attributed it to the failure of Nepomuceno and the other concerned employees to submit sufficient supporting documents for their claims for reimbursement and the release of their salaries and allowances.

On March 22, 2002, a Formal Charge[6] was issued against the respondent for the offenses of grave misconduct, gross insubordination and conduct prejudicial to the best interest of the service. These offenses were committed as follows:

1. That Marilyn G. Arandia intentionally refused to sign boxes A not only of the disbursement vouchers as payment for the approved and official travelling expenses to Manila of Director Eriberta B. Nepomuceno for the period from October 20-28, 1999, but also that of the vouchers as payments for the official travelling expenses incurred by Accountant

[4] *Id*. at 113-124.

[5] *Id*. at 125-136.

[6] Docketed as AC No. CSRO5-D-J00-018; *id*. at 137-138.

Remegia Caluya and Budget Officer Susana Bertes from October 26-28, 1999 and that of the disbursement voucher as payment for the official travel to Manila of Dr. Felina D. Ferro from February 20 to 25, 2000;

2. That Arandia refused to sign box A of the disbursement voucher as payment for the actual services rendered by one Jobert Mejillano from October 18 to 30, 1999 and from November 16 to 30, 1999;

3. That Arandia continuously refused to sign box A of the disbursement voucher as cash advance payment for diesel expenses to be incurred by Director Nepomuceno while on official travel to Manila from February 18 to 22, 2000 in the amount of ₱3,000.00 of ₱4,301.00 for the primary reason that Eriberta N. Navera is the authorized and recognized person who can get cash advance and not Eliberta (sic) B. Nepomuceno

   In Bringas-Dayson, Carmencita Giselle E.B., CSC Resolution no. 96-2351 the Commission said that "x x x *a judicial decree of nullity of a previous marriage is not necessary before a woman can resume using her maiden name. No law require that a judicial decree of nullity of a previous marriage be obtained by a married woman in order to validly use her maiden name";*

4. That Arandia vehemently refused to obey various directions of Director Nepomuceno on the approval of telephone call slip for the two division chiefs per memorandum dated 6 March 2000 and on the issuance directing Arandia to immediately turn-over all documents under her direct supervision and the exchange of room assignments with the duly constituted Administrative Officer-Designate pursuant to Special Order No. 023, s. of 2000 (dated 9 June 2000); and;

5. That on December 15, 1999 and February 16, 2000, Arandia, respectively, refused to sign box A of the disbursement voucher, to the prejudice of the interest of the service, as payment for the registration fee of three (3) participants to the two-day training on the "Revised Policies on Performance Evaluation System" and "Updates on Civil Service Matters."[7]

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[7] *Id*. at 137-138.

In an Order[8] dated April 26, 2006, Director Cecilia R. Nieto of CSCRO-V found respondent guilty of conduct prejudicial to the best interest of the service only and imposed on her the penalty of suspension for six months and one day. The respondent filed a motion for reconsideration but Director Nieto denied the motion in a subsequent order[9] dated June 8, 2006. She then appealed her case to the Civil Service Commission (*CSC*) National Office.

Ruling of the CSC

The CSC partially found merit in respondent's appeal. In a Resolution No. 070801 dated April 23, 2007,[10] the CSC made the following findings:

After careful evaluation of the records of the case, the Commission finds no substantial evidence to hold Arandia guilty of Conduct Prejudicial to the Best Interest of the Service.

x x x x x x x x x

First, it must be first pointed out that Arandia was held liable for Conduct Prejudicial to the Best Interest of the Service for her refusal to sign "box A" of various disbursement vouchers pertinent to the transactions of her office, namely, the disbursement vouchers for official travelling expenses of the complainant Director Nepomuceno for her trip to Manila covering the period of October 20 to 28, 1999, the disbursement vouchers for the travelling expenses of Remegio Caluya (Accountant) and Susana Ferro (Budget Officer) from October 26-28, 1999, and that of Felina Ferro from February 20-25, 2000 and the disbursement voucher for the payment of the salary of Jobert Mejillano for the period of October 18-30, 1999 and November 16-30, 1999. The records are replete with evidence that indeed Arandia had justifiable reasons in not signing these disbursement vouchers.

It must be emphasized that the functions performed by Arandia are not merely clerical in nature, neither are they ministerial. The

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[8] *Id*. at 141-146.

[9] *Id*. at 147-149.

[10] *Id*. at 150-163.

Position Description Form (PDF) of Arandia as Administrative Officer V states "*supervises and coordinates accounting functions, budget operation and control.*" Clearly, these functions require a degree of discretion which is even more amplified considering that it involves the disbursement of public funds. x x x

Clearly, the provisions of the foregoing law [referring to Section 171 of the GAAM] rendered Arandia to be more circumspect in (*sic*) performance of the duties of her office, specifically in affixing her signatures on undocumented disbursements. This circumspection with regard to her duties cannot be classified as an undue prejudice to the best interest of the service, thus making her liable for the offense.

Also, her cautious attitude in approving disbursements is not without basis. Records show that in the audit conducted by the DOST Central Office for the period January to August 1999 signed by then DOST Assistant Secretary Imelda D. Rodriguez yielded adverse findings with regard to the transactions of DOST Region V. In the said report, it was indicated that: "*The findings covered disbursement of public funds principally approved by Regional Director Eriberta N. Navera, which indicate a pattern of dishonesty, consisting largely of claims of the Regional Director which are unnecessary, irregular, excessive and extravagant. The disbursements indicate, likewise, a pattern of wanton disregard for accounting and auditing rules and regulations involving other finance officials such as the Budget Officer and the Accountant.*"

With respect to the salary of Jobert Mejillano, Arandia did not affix her signature in box of the disbursement voucher, since there was no valid basis to do so. This Commission in Memorandum Circular No. 46., s. 1990 (Prohibiting the Practice of Issuing Job Orders in Hiring Casuals) prohibits the hiring of Job Orders in hiring casuals. In DOST Memorandum dated May 24, 1999, then Assistant Secretary Imelda D. Rodriguez, instructed all Directors of DOST, to comply strictly with the aforementioned CSC memorandum circular. Thus, Arandia cannot be held liable for her refusal to sign the said disbursement voucher considering that she merely obeyed the DOST memorandum prohibiting the hiring of casuals thru job orders.

x x x x x x x x x

Records are bereft of any showing that the aforementioned requirements [referring to Section 168 of the GAAM] have been

complied with. In fact, the audit investigation conducted by the DOST Central Office showed that DOST Regional Office No. V incurred several unnecessary, irregular, excessive and extravagant disbursement of public funds. Thus, Arandia, in refusing (sic) affix her signature was exercising her prudent discretion, which by reason of the office she holds, was incumbent upon her.

On the issue of the (sic) Arandia's refusal to sign the appropriate box in the disbursement voucher for the travelling expenses for the period of January 20-February 14, 2000 of Director Eriberta Nepomuceno, the Commission likewise finds Arandia's refusal valid. While it is true that Arandia was furnished a copy of the (sic) Director Nepomuceno's affidavit that the latter is reverting to her maiden name, records show that Arandia relied on the opinion of the Assistant Secretary when she refused to sign the same. In fact, Arandia requested for a legal opinion from then DOST Assistant Secretary Apolonio B. Anota Jr., with regard to the procedure to be followed. In a Memorandum addressed to Director Nepomuceno dated February 28, then Assistant Secretary Anota relying on Articles 371-373 of the Civil Code replied:

"*Considering that our records show that your appointment paper, oath of office and other official documents are clear that the one appointed to, and who assumed, the position of Regional Director DOST Regional Office 5 carries the name ERIBERTA N. NAVERA, the following requirements should be complied with before we can consider that the person bearing said name and ERIBERTA NEPOMUCENO is one and the same: x x x*

"For the meantime, this Department will be recognizing all acts and official matters coming from the Regional Director, DOST 5 under the official name ERIBERTA N. NAVERA only."[11]

These findings, notwithstanding, the CSC still found the respondent liable for insubordination for her refusal to obey several memoranda issued by Nepomuceno requiring her to immediately turn-over the documents under her supervision to the new Administrative Officer-Designate, Engr. Manuel Sn. B. Lucena, Jr., and to comply with the exchange of room assignment (as well as the memoranda directing her to answer

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[11] *Id.* at 159-161.

or submit an explanation for her refusal) brought about by the respondent's reassignment from the position of Administrative Officer to Planning Officer.

It appears that, on August 29, 1999, Nepomuceno issued Special Order No. 32 designating the respondent as Planning Officer and Co-Division Chief of the Technical Services Division of DOST-V, which order was temporarily suspended (pending a motion for clarification) and then re-issued on June 9, 2000 as Special Order No. 23. The respondent filed a motion for reconsideration questioning her reassignment on June 27, 2000.

Also, the CSC found that the respondent refused to comply with an office memorandum dated March 6, 2000 requiring her and another Division Chief, to secure Nepomuceno's approval/ signature before using the office telephone. For these reasons, the CSC found the respondent guilty of two counts of insubordination and imposed on her the penalty of three months suspension.[12] The respondent filed a motion for reconsideration which the CSC denied; thus, the appeal with the CA.

Ruling of the CA

In its assailed decision, the CA ruled in the respondent's favor and dismissed the administrative complaint filed against the respondent after it found that she actually complied with the subject office memoranda:

> Immediately upon receipt of such denial [referring to the denial of the respondent's motion for reconsideration to her reassignment], petitioner [respondent herein] complied with Nepomuceno's order and forwarded to Engr. Lucena pertinent documents in her possession. This is evinces by the *Letter* dated 28 June 2000 detailing the list of documents entrusted into the custody of Engr. Lucena, The *Letter* speaks for itself as it ineluctably established that petitioner complied with her superior's order – to turn over pertinent documents despite her reluctance to relinquish her post as Administrative Officer V.
>
> Next, the records unearthed that it was Engr. Lucena who was hesitant, if not, unwilling to exchange room assignments with

[12] *Id*. at 162.

petitioner. His *Letter* dated 28 February 2002 to Nepomuceno cannot be any clearer –

> This is to request retention of my present room assignment at PMES for the very reason that key ASD officers' (Accountant, Budget Officer and Supply Officer) offices are already located on the first floor adjacent to it. It would be most convenient and advantageous to all if we were to be located near one another for an efficient and effective flow of official transactions.
>
> I hope that this will merit your kind approval.

This was followed by another missive explaining at greater length why he was skeptic in exchanging rooms with petitioner –

> Anent your memo dated 1 August 2003 of same subject, may I request that my transfer to TSD Room be temporarily put aside for the following reasons:
>
> 1. As I repeatedly conveyed to you, taking into consideration my assignment in planning where a lot of concentration is needed, movement and sound common in a shared room easily distract me. My previous Directors recognized it that is why I am assigned in this present room since 1996. And the whole are including the computer room is assigned to PMES and IT where I also belong as its Project Manager. We worked as a team.
>
> 2. Scattering me and my Team members in PMES-IT will effectively destroy our teamwork to the detriment of the projects and in total contrast to sound management practice of teamwork and team building. Also, I can easily attend to the computer server LAN-internet requirements together with and/or in the absence of Mr. Serrano because it is just within the same work area.
>
> x x x x x x x x x

How then could petitioner transfer to Engr. Lucena's room given that it was the latter who refused to surrender his office space? Petitioner found herself in an apparent *cul-de-sac* as she was unable to move in to Engr. Lucena's room through no fault of her own.[13]

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[13] *Id*. at 74-76.

The CA likewise found that the respondent did not violate the March 6, 2000 memorandum that required her to seek clearance from the Regional Director's Office before making any phone call because at the time the respondent made the contested telephone calls, she had not yet received any copy of the memorandum.

The Issue

The sole issue raised in the present petition for review on *certiorari* is the respondent's liability for insubordination.

Our Ruling

We find the present petition partially meritorious. The respondent is guilty of simple insubordination.

Insubordination is defined as a refusal to obey some order, which a superior officer is entitled to give and have obeyed. The term imports a willful or intentional disregard of the lawful and reasonable instructions of the employer.[14]

In this case, the respondent committed insubordination when she failed to promptly act on the June 16, 2000 memorandum[15] issued by her superior, Regional Director Nepomuceno, reminding her of her duties to immediately turn-over documents to and exchange room assignments with the new Administrative Officer-Designate, Engr. Lucena. The subject memorandum was a lawful order issued to enforce Special Order No. 23, s. of 2000 reassigning the respondent from Administrative to Planning Officer, and which warranted the respondent's obedience and compliance.

The reiteration of the directives in the June 16, 2000 memorandum in several succeeding memoranda issued by Nepomuceno (dated June 19, 2000,[16] June 23, 2000[17] and June

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[14] *Judge Dalmacio-Joaquin v. Dela Cruz,* A.M. No. P-07-2321, April 24, 2009.

[15] *Id.* at 193.

[16] *Id.* at 194.

[17] *Id.* at 162.

26, 2000),[18] all the more demonstrates the respondent's inaction and non-compliance with her superior's orders. The records show that it was only on June 28, 2000 that the respondent complied with the document turn-over through a letter addressed to Engr. Lucena containing a list of personnel files, human resource management and general administration documents under her accountability.[19]

We see in the respondent's initial inaction her deliberate choice not to act on the subject memoranda; she waited until the resolution of her motion for reconsideration of her reassignment (that she filed on June 27, 2000) before she actually complied. The service would function very inefficiently if these types of dilatory actions would be allowed.

As for the memorandum on the use of the office telephone, we find, as the CA did, the charge against the respondent unmeritorious. Though the subject memorandum was issued on March 6, 2000, the respondent's office received it only on March 7, 2000 at around 10 o'clock in the morning.[20] Thus, respondent could not have committed a violation for the telephone calls she made earlier that day.

Insubordination is a less grave offense punishable by suspension of one month and one day to six months.[21] Since we merely found the respondent guilty of insubordination in not promptly complying with the memoranda for the turn-over of documents, we find the suspension of one month and one day as sufficient penalty for her offense.

Considering, however, that respondent is no longer with DOST-V and is now working abroad, we can no longer impose on her the penalty of suspension from service. In lieu thereof, we impose on the respondent the penalty of a fine of one month salary, which amount is to be deducted from her retirement

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[18] *Id*.

[19] *Id*. at 202-204.

[20] *Id*. at 23.

[21] *Revised Uniform Rules on Administrative Cases in the Civil Service*, Memorandum Circular No. 19, s. of 1999.

benefits or from whatever benefits, if any, that she is still entitled to receive after her resignation. If there is none, the respondent is ordered to pay the fine directly to and within the period to be directed by the CSC.

WHEREFORE, premises considered, we find Marilyn G. Arandia **GUILTY of INSUBORDINATION** and impose on her the penalty of a **FINE** equivalent to her one month salary.

SO ORDERED.

Carpio (Chairperson), del Castillo, Perez, and *Perlas-Bernabe, JJ.,* concur.

SECOND DIVISION

[G.R. No. 200358. April 7, 2014]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **GERRY YABLE *y* USMAN,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. NO. 9165); SECTION 21 THEREOF; SUBSTANTIAL COMPLIANCE WITH THE PROCEDURE TO ESTABLISH A CHAIN OF CUSTODY IS AUTHORIZED, AS LONG AS THE INTEGRITY AND EVIDENTIARY VALUE OF THE SEIZED ITEMS IS PROPERLY PRESERVED BY THE APPREHENDING OFFICERS.— Relevant to Gerry's case is the procedure to be followed in the custody and handling of the seized dangerous drugs as outlined in Section 21, paragraph 1, Article II, R.A. No. 9165 x x x. This provision is elaborated in Section 21(a), Article II of the Implementing Rules and Regulations of R.A. No. 9165 x x x. [T]he aforecited rule authorizes substantial compliance with

the procedure to establish a chain of custody, as long as the integrity and evidentiary value of the seized item is properly preserved by the apprehending officers. In *People v. Pringas*, the Court recognized that the strict compliance with the requirements of Section 21 may not always be possible under field conditions; the police operates under varied conditions, and cannot at all times attend to all the niceties of the procedures in the handling of confiscated evidence. Here, the prosecution recognized the procedural lapses and exerted efforts to cite justifiable ground.

2. **ID.; ID.; ID.; THE PHRASE "MARKING UPON IMMEDIATE CONFISCATION" CONTEMPLATES EVEN MARKING AT THE NEAREST POLICE STATION OR OFFICE OF THE APPREHENDING TEAM; WHAT IS IMPORTANT IS THAT THE SEIZED ITEM MARKED AT THE POLICE STATION IS IDENTIFIED AS THE SAME ITEM PRODUCED IN COURT.—** [T]he fact that the marking on the seized item was done at the police station, and not at alleged crime scene, did not compromise the integrity of the seized evidence. As ruled by this Court in *Marquez v. People*, the phrase "marking upon immediate confiscation" contemplates even marking at the nearest police station or office of the apprehending team. What is important is that the seized item marked at the police station is identified as the same item produced in court. As correctly ruled by the CA, the prosecution was able to establish the integrity of *corpus delicti* and the unbroken chain of custody. PO1 Vargas identified in open court the sachet of *shabu* that was offered in evidence against Gerry as the same one she seized from the latter and marked immediately thereafter in the presence of the police investigator

3. **ID.; ID.; ID.; FOR AS LONG AS THE CHAIN OF CUSTODY REMAINS UNBROKEN,THE FAILURE OF THE ARRESTING OFFICERS TO TAKE A PHOTOGRAPH OF THE SEIZED DRUGS IS NOT FATAL AND WILL NOT RENDER THE ITEMS SEIZED INADMISSIBLE IN EVIDENCE.—** [T]his Court has consistently ruled that even in instances where the arresting officers failed to take a photograph of the seized drugs as required under Section 21 of R.A. No. 9165, such procedural lapse is not fatal and will not render the items seized inadmissible in evidence. What is of utmost importance is the preservation of the integrity and

evidentiary value of the seized items, as the same would be utilized in the determination of the guilt or innocence of the accused. In other words, to be admissible in evidence, the prosecution must be able to present through records or testimony, the whereabouts of the dangerous drugs from the time these were seized from the accused by the arresting officers; turned-over to the investigating officer; forwarded to the laboratory for determination of their composition; and up to the time these are offered in evidence. For as long as the chain of custody remains unbroken, as in this case, even though the procedural requirements provided for in Section 21 of R.A. No. 9165 was not faithfully observed, the guilt of the accused will not be affected.

4. ID.; ID.; ID.; THE INTEGRITY OF THE EVIDENCE IS PRESUMED TO HAVE BEEN PRESERVED UNLESS THERE IS SHOWING OF BAD FAITH, ILL WILL, OR PROOF THAT THE EVIDENCE HAS BEEN TAMPERED WITH.— The integrity of the evidence is presumed to have been preserved unless there is a showing of bad faith, ill will, or proof that the evidence has been tampered with. Gerry bears the burden of showing that the evidence was tampered or meddled with in order to overcome the presumption of regularity in the handling of exhibits by public officers and the presumption that public officers properly discharged their duties. Gerry in this case failed to present any plausible reason to impute ill motive on the part of the arresting officers. Thus, the testimonies of the apprehending officers deserve full faith and credit. In fact, Gerry did not even question the credibility of the prosecution witnesses. He anchored his appeal solely on the alleged broken chain of the custody of the seized drugs.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

D E C I S I O N

PEREZ, ***J.*:**

For review of this Court is the appeal filed by Gerry Yable *y* Usman (Gerry) assailing the 23 May 2011 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-HC No. 03303. The CA affirmed the Decision of the Regional Trial Court (RTC), Branch 78, Quezon City finding the accused guilty of violating Section 5, Article II of Republic Act (R.A.) No. 9165, otherwise known as the Comprehensive Drugs Act of 2002.

The Antecedents

On 3 May 2005, an Information was filed against Gerry before the Regional Trial Court (RTC), Quezon City for violation of Section 5, Article II of R.A No. 9165, to wit:

> That on or about the 27th day of April 2005, in Quezon City, Philippines, the said accused, not being authorized by law to sell, dispense, deliver, transport or distribute any dangerous drug, did then and there willfully and unlawfully sell, dispense, deliver, transport, distribute or act as broker in the said transaction, one (1) sachet of white crystalline substance containing zero point fifteen (0.15) gram of [Methamphetamine] Hydrochloride, a dangerous drug.[2]

COUNTERSTATEMENT OF FACTS

Version of the Prosecution

Acting on a tip given by a confidential informer, the Quezon City Anti-Drug Abuse Council (QC-ADAC) assembled a team to conduct a buy-bust operation in Payatas area, where a certain Gerry Yable was alleged to be selling illegal drugs

Police Officer 1 Peggy Lynne Vargas (PO1 Vargas) who was designated to act as poseur-buyer was given a Five Hundred

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[1] *Rollo*, pp. 2-12; Penned by Associate Justice Noel G. Tijam with Associate Justices Marlene Gonzales-Sison and Leoncia R. Dimagiba concurring.

[2] Records, Vol. I, p. 1.

Peso bill representing the buy-bust money. To mark the buy-bust money, she placed her initials on the forehead of Senator Benigno Aquino, Jr.[3] It was planned that PO1 Vargas would be introduced by the informer to Gerry as a buyer. After the exchange of money and *shabu*, PO1 Vargas would scratch her forehead to indicate the consummation of the sale and as signal for the back-up team to approach and apprehend Gerry. A pre-operation report was prepared to coordinate the buy-bust operation with the Philippine Drug Enforcement Agency (PDEA).[4]

At 12:00 o:clock noon of 27 April 2005, the team proceeded to the target area. PO1 Vargas and the informant met Gerry at Lower Yasmin Street, Payatas, Quezon City. After being introduced, Gerry allegedly asked PO1 Vargas if she will score and the latter answered "five pesos (Php 5.00) only."[5] Gerry asked for the money and took from his pocket the plastic sachet containing *shabu* and handed it over to PO1 Vargas. Thereafter, PO1 Vargas made the pre-arranged signal by scratching her forehead and the back-up policemen approached and introduced themselves to Gerry. PO2 Joseph Ortiz (PO2 Ortiz) searched Gerry and found in his pocket the five hundred peso (Php500.00) bill which contained the "PV" initials.[6] PO2 Ortiz apprised Gerry of his right to remain silent and his right to engage the services of a lawyer because they would be filing a case for violation of R.A. No. 9165 against him. Gerry chose to remain silent and the team boarded him in their vehicle. He was brought to the City Hall of Quezon City to be turned over to the police investigator.[7]

Version of the Defense

Gerry denied the charges against him. He maintained that he was in a store to buy rice when the police officers passed by

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[3] *Id*., Vol. III, pp. 9-10; TSN, 11 August 2005.

[4] *Id*. at 10-11.

[5] *Id*. at 17.

[6] *Id*., Vol. III, pp. 56-57; TSN, 27 October 2005.

[7] *Id*., Vol. I, p. 119; RTC Decision.

while pursuing a certain "Mags." He alleged that he was approached by the policemen and was asked where "Mags" was. When he answered in the negative, he was made to ride on a motorcycle and was brought to Quezon City Hall.[8] He further alleged that the witnesses, however, positively identified him as the one selling *shabu* at Lower Yasmin Street and was the one apprehended by Police Officers Vargas and Ortiz.

Ruling of the RTC

On 28 March 2008, the trial court rendered a Decision finding Gerry guilty beyond reasonable doubt of the offense charged. The RTC found that the prosecution succeeded in proving beyond reasonable doubt the guilt of Gerry for violation of Section 5, Article II, R.A. No. 9165. It ruled that the evidence presented during the trial adequately established that a valid buy-bust operation was conducted by the operatives of the QC-ADAC, in coordination with PDEA. On the other hand, Gerry failed to present substantial evidence to establish his defense of frame-up. The RTC ruled that frame-up, as advanced by Gerry, is generally looked upon with disfavor on account of its aridity and the facility with which an accused could concoct the same to suit his defense.[9] With the positive identification made by the government witnesses as the perpetrator of the crime, his self-serving denial is worthless.[10] Since there was nothing in the record to show that the arresting team and the prosecution witnesses were actuated by improper motives, their affirmative statements proving Gerry's culpability was respected by the trial court.

With caution by the court because it is easy to contrive and difficult to disprove. Like *alibi*, frame-up as a defense had invariably been viewed with disfavor as it is common and standard line of defense in most prosecutions arising from violation of the Dangerous Drugs Act.[11]

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[8] *Id*., Vol. III, pp. 118-119; TSN, 24 January 2008.

[9] *People v. Alib*, 379 Phil. 103, 112 (2000).

[10] *People v. Aquino*, 379 Phil. 845, 853 (2000).

[11] *People v. Evangelista*, 560 Phil. 510, 521 (2007).

The Ruling of the Court of Appeals

The CA affirmed the Decision of the RTC, upon a finding that all of the elements of illegal sale of dangerous drug have been sufficiently established by the prosecution. It found credible the statements of prosecution witnesses PO1Vargas and PO2 Ortiz about what transpired during and after the buy-bust operation. Further, it ruled that the prosecution has proven as unbroken the chain of custody of evidence. The CA likewise upheld the findings of the trial court that the buy-bust operation conducted enjoyed the presumption of regularity, absent any showing of ill-motive on the part of the police operatives who conducted the same.

The CA likewise found Gerry's defenses of denial and frame-up unconvincing and lacked strong corroboration.

Hence, this appeal.

ISSUE

Gerry raised in his brief the following errors on the part of the appellate court, to wit:

> The trial court gravely erred in finding the accused-appellant guilty beyond reasonable doubt of the crime charged.
>
> The trial court gravely erred in convicting the accused-appellant despite the prosecution's failure to establish the chain of custody of the alleged confiscated drug.[12]

Our Ruling

The appeal is bereft of merit.

Gerry submits that the trial court and the CA failed to consider the procedural flaws committed by the arresting officers in the seizure and custody of drugs as embodied in Section 21, paragraph 1, Article II, R.A. No. 9165.[13] Gerry alleges that no physical inventory or photograph was conducted at the crime scene or

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[12] CA *rollo*, p. 53; Brief for the Accused-Appellant.

[13] *Id.* at 8.

in his presence. Instead, the marking of the confiscated drug was done in front of the investigator at the police precinct. Such lapses on the part of the apprehending officers raises doubt on whether the *shabu* submitted for laboratory examination and subsequently presented in court as evidence, was the same one confiscated from Gerry.[14]

Relevant to Gerry's case is the procedure to be followed in the custody and handling of the seized dangerous drugs as outlined in Section 21, paragraph 1, Article II, R.A. No. 9165, which reads:

> (1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof[.]

This provision is elaborated in Section 21(a), Article II of the Implementing Rules and Regulations of R.A. No. 9165, which states:

> (a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof: Provided, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; **Provided, further, that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized**

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[14] *Id.* at 9.

items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items. (Emphasis supplied)

Clearly, the aforecited rule authorizes substantial compliance with the procedure to establish a chain of custody, as long as the integrity and evidentiary value of the seized item is properly preserved by the apprehending officers. In *People v. Pringas*,[15] the Court recognized that the strict compliance with the requirements of Section 21 may not always be possible under field conditions; the police operates under varied conditions, and cannot at all times attend to all the niceties of the procedures in the handling of confiscated evidence.

Here, the prosecution recognized the procedural lapses and exerted efforts to cite justifiable grounds. During the re-direct examination of PO2 Ortiz, he testified as follows:

Q: Were there no photographs taken?

A: None, Sir.

Q: Why?

A: Because there were many people who created a commotion in the area, Sir.

Q: What commotion are you saying?

A: The people were curious at the time, Sir.

Q: And why was there no *barangay* official who witnessed the arrest of the accused?

A: We did not see any *barangay* official, Sir.

Q: Why did you not coordinate first with the *barangay* officials of the place?

A: We just secured permission, Sir.

Q: But under the provisions of Republic Act No. 9165, you are likewise [directed] to coordinate with the *barangay* officials, why did you not coordinate with them?

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[15] 558 Phil. 579, 593 (2007).

A: We did not do it anymore, Sir.

Q: Any reason for that?

A: Because according to the informant if we coordinate with the *barangay* officials, the suspect may come to know about it, Sir.[16]

Moreover, the fact that the marking on the seized item was done at the police station, and not at alleged crime scene, did not compromise the integrity of the seized evidence. As ruled by this Court in *Marquez v. People*,[17] the phrase "marking upon immediate confiscation" contemplates even marking at the nearest police station or office of the apprehending team. What is important is that the seized item marked at the police station is identified as the same item produced in court.

As correctly ruled by the CA, the prosecution was able to establish the integrity of *corpus delicti* and the unbroken chain of custody. PO1 Vargas identified in open court the sachet of *shabu* that was offered in evidence against Gerry as the same one she seized from the latter and marked immediately thereafter in the presence of the police investigator.[18]

The police investigator continued the chain when he testified that he saw PO1 Vargas making the appropriate markings on the sachet, as well as issuance of an inventory receipt as evidence of transfer of custody.[19]

At the pre-trial conference, both the prosecution and defense stipulated on the findings of the chemist or laboratory examination report. The report on the laboratory examination showed that the marking "PV-04-27-05" was indicated on the seized item. Such marking, as testified by the police investigator, was made by PO1 Vargas in his presence at the time the evidence was

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[16] Records, Vol. III, pp. 75-76; TSN, 14 February 2006.

[17] G.R. No. 197207, 13 March 2013, 693 SCRA 468, 475.

[18] *Rollo*, pp. 8-9; CA Decision citing TSN, 11 August 2005, records, Vol. III, pp. 19-20.

[19] *Id.* citing TSN, 28 March 2006, records, Vol. III, pp. 92-94.

turned over to him. This admission of the parties completed the chain of custody of the seized item.

Furthermore, this Court has consistently ruled that even in instances where the arresting officers failed to take a photograph of the seized drugs as required under Section 21 of R.A. No. 9165, such procedural lapse is not fatal and will not render the items seized inadmissible in evidence.[20] What is of utmost importance is the preservation of the integrity and evidentiary value of the seized items, as the same would be utilized in the determination of the guilt or innocence of the accused.[21] In other words, to be admissible in evidence, the prosecution must be able to present through records or testimony, the whereabouts of the dangerous drugs from the time these were seized from the accused by the arresting officers; turned-over to the investigating officer; forwarded to the laboratory for determination of their composition; and up to the time these are offered in evidence. For as long as the chain of custody remains unbroken, as in this case, even though the procedural requirements provided for in Section 21 of R.A. No. 9165 was not faithfully observed, the guilt of the accused will not be affected.[22]

The integrity of the evidence is presumed to have been preserved unless there is a showing of bad faith, ill will, or proof that the

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[20] *People v. Jose Almodiel*, G.R. No. 200951, 5 September 2012, 680 SCRA 306, 323; *People v. Campos*, G.R. No. 186526, 25 August 2010, 629 SCRA 462, 468 citing *People v. Concepcion, et al.*, 578 Phil. 957, 971 (2008).

[21] *People v. Mangundayao*, G.R. No. 188132, 29 February 2012, 667 SCRA 310, 338; *People v. Le*, G.R. No. 188976, 29 June 2010, 622 SCRA 571, 583 citing *People v. De Leon*, G.R. No. 186471, 25 January 2010, 611 SCRA 118, 133 further citing *People v. Naquita*, G.R. No. 180511, 28 July 2008, 560 SCRA 430, 448; *People v. Concepcion*, 578 Phil. 957, 971 (2008).

[22] *People v. Manlangit*, G.R. No. 189806, 12 January 2011, 639 SCRA 455, 469-470 citing *People v. Rosialda*, G.R. No. 188330, 25 August 2010, 629 SCRA 507, 520-521 further citing *People v. Rivera*, G.R. No. 182347, 17 October 2008, 569 SCRA 879, 897-899.

evidence has been tampered with. Gerry bears the burden of showing that the evidence was tampered or meddled with in order to overcome the presumption of regularity in the handling of exhibits by public officers and the presumption that public officers properly discharged their duties.[23] Gerry in this case failed to present any plausible reason to impute ill motive on the part of the arresting officers. Thus, the testimonies of the apprehending officers deserve full faith and credit.[24] In fact, Gerry did not even question the credibility of the prosecution witnesses. He anchored his appeal solely on the alleged broken chain of the custody of the seized drugs.

On the basis of the aforesaid disquisition, we find no reason to modify or set aside the Decision of the CA. Gerry was correctly found to be guilty beyond reasonable doubt of violating Section 5, Article II of R.A. No. 9165.

WHEREFORE, the appeal is **DENIED** and the 23 May 2011 Decision of the Court of Appeals in CA-G.R. CR-HC No. 03303 is hereby **AFFIRMED**.

SO ORDERED.

Carpio (Chairperson), Brion, del Castillo, and *Perlas-Bernabe, JJ.,* concur.

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[23] *People v. Miranda*, 560 Phil. 795, 810 (2007).

[24] See *People v. Macabalang*, 538 Phil. 136, 155 (2006).

FIRST DIVISION

[G.R. No. 205227. April 7, 2014]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **MARCO P. ALEJANDRO,** *accused-appellant.*

SYLLABUS

1. **CRIMINAL LAW; THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. NO. 9165); ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS; ESTABLISHED.—** Firmly established in our jurisprudence is the rule that in the prosecution for illegal sale of dangerous drugs, the following essential elements must be proven: (1) that the transaction or sale took place; (2) the *corpus delicti* or the illicit drug was presented as evidence; and (3) that the buyer and seller were identified. Implicit in all these is the need for proof that the transaction or sale actually took place, coupled with the presentation in court of the confiscated prohibited or regulated drug as evidence. What determines if there was, indeed, a sale of dangerous drugs in a buy-bust operation is proof of the concurrence of all the elements of the offense, to wit: (1) the identity of the buyer and the seller, the object, and the consideration; and (2) the delivery of the thing sold and the payment therefor. The above elements were satisfactorily established by the prosecution.

2. **ID.; ID.; ID.; IN CASES INVOLVING VIOLATIONS OF THE DANGEROUS DRUGS ACT, CREDENCE IS GIVEN TO PROSECUTION WITNESSES WHO ARE POLICE OFFICERS FOR THEY ENJOY THE PRESUMPTION OF HAVING PERFORMED THEIR DUTIES IN A REGULAR MANNER, UNLESS, THERE IS EVIDENCE TO THE CONTRARY SUGGESTING ILL-MOTIVE ON THEIR PART OR DEVIATION FROM THE REGULAR PERFORMANCE OF THEIR DUTIES.—** [A]ll the elements of the crime were established by both the oral and object evidence presented in court. It is settled that in cases involving violations of the Dangerous Drugs Act, credence is given to prosecution witnesses who are police officers for they enjoy the presumption of having performed their duties in a regular manner, unless,

of course, there is evidence to the contrary suggesting ill-motive on their part or deviation from the regular performance of their duties. Since no proof of such ill-motive on the part of the PDEA buy-bust team was adduced by appellant, the RTC and CA did not err in giving full faith and credence to the prosecution's account of the buy-bust operation. This Court has repeatedly stressed that a buy-bust operation (which is a form of entrapment) is a valid means of arresting violators of R.A. No. 9165.

3. ID.; ID.; ID.; CHAIN OF CUSTODY RULE; THE FAILURE OF THE PROSECUTION TO SHOW THAT THE POLICE OFFICERS CONDUCTED THE REQUIRED PHYSICAL INVENTORY AND PHOTOGRAPH OF THE EVIDENCE CONFISCATED PURSUANT TO THE GUIDELINES DOES NOT AUTOMATICALLY RENDER ACCUSED'S ARREST ILLEGAL OR THE ITEMS SEIZED FROM HIM INADMISSIBLE FOR WHAT IS OF UTMOST IMPORTANCE IS THE PRESERVATION OF THE INTEGRITY AND EVIDENTIARY VALUE OF THE SEIZED ITEMS, AS THE SAME WOULD BE UTILIZED IN THE DETERMINATION OF THE GUILT OF THE ACCUSED.— In this case, while SPO1 Cariaso testified that he immediately marked the transparent plastic sachet containing white crystalline substance sold to him by appellant, there was no statement as to whether such marking was made at the place of arrest. From the records it is clear that such marking was done upon reaching the PDEA office before its turnover to the investigator on duty. What is important is that the seized specimen never left the custody of SPO1 Cariaso as he was present throughout the physical inventory being conducted by the said investigator. This Court has already ruled in several cases that the failure of the prosecution to show that the police officers conducted the required physical inventory and photograph of the evidence confiscated pursuant to the guidelines, is not fatal. It does not automatically render accused-appellant's arrest illegal or the items seized/confiscated from him inadmissible. What is of utmost importance is the preservation of the integrity and evidentiary value of the seized items, as the same would be utilized in the determination of the guilt of the accused.

4. ID.; ID.; ID.; ID.; SUBSTANTIAL COMPLIANCE WITH

THE PROCEDURAL ASPECT OF THE CHAIN OF CUSTODY RULE DOES NOT NECESSARILY RENDER THE SEIZED DRUG ITEMS INADMISSIBLE.— Records reveal that only the marked money was photographed at the PDEA office. The Certificate of Inventory, though not signed by the accused, was duly signed by team leader PCI Ablang, a representative from the media and a *barangay* councilor. We thus find substantial compliance with the requirements of Section 21 of R.A. No. 9165 and IRR. Time and again, jurisprudence is consistent in stating that substantial compliance with the procedural aspect of the chain of custody rule does not necessarily render the seized drug items inadmissible. In the instant case, although the police officers did not strictly comply with the requirements of Section 21, Article II of R.A. No. 9165, their noncompliance did not affect the evidentiary weight of the drugs seized from appellant as the chain of custody of the evidence was shown to be unbroken under the circumstances of the case.

5. **ID.; ID.; ID.; ID.; LINKS IN THE CHAIN OF CUSTODY.—** In the case of *People v. Kamad*, the Court enumerated the links that the prosecution must establish in the chain of custody in a buy-bust situation to be as follows: *first*, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; *second*, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; *third*, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and *fourth*, the turnover and submission of the marked illegal drug seized from the forensic chemist to the court.

6. **ID.; ID.; ID.; ID.; AS LONG AS THE CHAIN OF CUSTODY OF THE SEIZED DRUG WAS CLEARLY ESTABLISHED TO HAVE NOT BEEN BROKEN AND THE PROSECUTION DID NOT FAIL TO IDENTIFY PROPERLY THE DRUGS SEIZED, IT IS NOT INDISPENSABLE THAT EACH AND EVERY PERSON WHO CAME INTO POSSESSION OF THE DRUGS SHOULD TAKE THE WITNESS STAND.—** The non-presentation as witnesses of other persons such as the investigator and the receiving clerk of the PNP Regional Crime Laboratory is not a crucial point against the prosecution. The

matter of presentation of witnesses by the prosecution is not for the court to decide. The prosecution has the discretion as to how to present its case and it has the right to choose whom it wishes to present as witnesses. Further, there is nothing in R.A. No. 9165 or in its implementing rules, which requires each and every one who came into contact with the seized drugs to testify in court. "As long as the chain of custody of the seized drug was clearly established to have not been broken and the prosecution did not fail to identify properly the drugs seized, it is not indispensable that each and every person who came into possession of the drugs should take the witness stand."

7. **ID.; ID.; ID.; FRAME UP IS GENERALLY VIEWED WITH CAUTION BY THE COURT BECAUSE IT IS EASY TO CONTRIVE AND DIFFICULT TO DISPROVE AND IS A COMMON AND STANDARD LINE OF DEFENSE IN PROSECUTIONS OF VIOLATIONS OF THE DANGEROUS DRUGS ACT.—** Frame-up, like alibi, is generally viewed with caution by the Court because it is easy to contrive and difficult to disprove. It is a common and standard line of defense in prosecutions of violations of the Dangerous Drugs Act. To substantiate such defense, the evidence must be clear and convincing and should show that the members of the buy-bust team were inspired by any improper motive or were not properly performing their duty. Otherwise, the police officers' testimonies on the operation deserve full faith and credit. No such evidence was presented by appellant in this case.

8. **ID.; ID.; ID.; PROPER PENALTY.—** Under Section 5, Article II of R.A. No. 9165, the penalty of life imprisonment to death and fine ranging from ₱500,000.00 to ₱10,000,000.00 shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drug, including any and all species of *opium* poppy regardless of the quantity and purity involved. Hence, the RTC, as affirmed by the CA, correctly imposed the penalty of life imprisonment and a fine of ₱1,000,000.00.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Aguinaldo and Aguinaldo-Baluya Law Offices for accused-appellant.

D E C I S I O N

VILLARAMA, JR., *J.*:

On appeal is the Decision[1] dated November 11, 2011 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 03483 which affirmed the judgment[2] of the Regional Trial Court (RTC) of Muntinlupa City, Branch 204 convicting appellant of illegal sale of methamphetamine hydrochloride (*shabu*) under Section 5, Article II of Republic Act (R.A.) No. 9165 (The Comprehensive Dangerous Drugs Act of 2002). In its Resolution[3] dated March 14, 2012, the CA denied the motion for reconsideration filed by appellant.

The Facts

Marco P. Alejandro (appellant), along with Imelda G. Solema and Jenny V. del Rosario, were charged with violation of Section 5, Article II of R.A. No. 9165 under the following Information:

That on or about the 12th day of July, 2006, in the City of Muntinlupa, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually helping and aiding one another, not being authorized by law did then and there willfully, unlawfully and feloniously sell, trade deliver and give away to another, Methamphetamine Hydrochloride, a dangerous drug weighing 98.51

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[1] *Rollo,* pp. 49-69. Penned by Associate Justice Romeo F. Barza with Associate Justices Rosalinda Asuncion-Vicente and Edwin D. Sorongon concurring.

[2] Records, pp. 583-595. Penned by Presiding Judge Juanita T. Guerrero.

[3] *Rollo,* pp. 71-72.

grams contained in one (1) heat-sealed transparent plastic sachet, in violation of the above-cited law.

Contrary to law.[4]

When arraigned, all three accused pleaded not guilty. Upon demurrer to evidence filed by accused Jenny del Rosario, the trial court rendered judgment acquitting her of the crime charged considering that her mere presence in the car used by appellant is not indicative of conspiracy in the sale of illegal drugs.[5]

At the pre-trial, the parties stipulated on the following:

1. The identity of the accused as the persons charged;
2. The jurisdiction of this Court over the persons of the accused;
3. Police Inspector Ruben Mamaril Apostol Jr. is a member of a PNP Crime Laboratory Office as of July 12, 2006 and he is an expert in Forensic Chemistry;
4. That a request for laboratory examination was made for the specimens allegedly confiscated from the accused;
5. The existence and authenticity of the request for examination of the seized items and Request for a drug test on the persons of the accused;
6. That pursuant to the requests for the drug test and examination of the specimens, the corresponding Regional Crime Laboratory Office, Calabarzon issued two (2) chemistry reports, D-267-06 and CRIM[D]T-286-06 that subject specimens submitted are positive for methamphetamine hydrochloride; and
7. That only a representative sample of the specimens submitted were examined by the Forensic Chemist which consist of one (1) transparent sachet containing white crystalline substance in black and red markings.[6]

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[4] Records, p. 1.

[5] *Id*. at 127-132.

[6] *Id*. at 584.

Version of the Prosecution

The prosecution presented the following factual milieu based on the testimonies of SPO1 Jaime A. Cariaso (*poseur-buyer*), SPO1 Norman Jesus P. Platon and Police Inspector Ruben M. Apostol, Jr. (Forensic Chemical Officer):

In the morning of July 11, 2006, a Confidential Informant (CI) went to the Philippine Drug Enforcement Agency (PDEA) Regional Office 4-A (CALABARZON) at Camp Vicente Lim in Calamba City, Laguna. The CI informed Regional Director P/Supt. Raul L. Bargamento that he was able to set up a deal with a certain "Aida" who directed him to look for a buyer of 100 grams of *shabu* for the price of ₱360,000.00.[7]

Immediately, P/Supt. Bargamento instructed Police Chief Inspector Julius Ceasar V. Ablang to form a team who will conduct a buy-bust operation. PCI Ablang organized the team composed of eleven police officers and made the proper coordination with PDEA. Since the target area is situated in Barangay Bayanan, Muntinlupa City, Metro Manila, the team likewise obtained the requisite "Authority to Operate Outside AOR."[8] During the briefing, SPO1 Cariaso was designated as poseur-buyer while SPO1 Platon will be his back-up arresting officer. Four pieces of five hundred peso (₱500) bills were then prepared and marked by SPO1 Cariaso. The said bills stacked on the boodle money were placed inside SPO1 Cariaso's belt bag. On the same day, SPO1 Cariaso and SPO1 Platon, along with the CI, conducted a surveillance of the house of "Aida" and vicinity. Prior to these preparations, the CI had contacted "Aida" through her cellphone and arranged the 2:00 p.m. meeting/sale transaction the following day.[9]

The next day, July 12, 2006, at around 12:00 noon, the team accompanied by the CI boarded two service vehicles and

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[7] TSN, August 4, 2006, pp. 5-7 (records pp. 188-190); TSN, October 25, 2006, pp. 4-5 (*id.* at 412-413).

[8] Records, pp. 18-20.

[9] TSN, August 4, 2006, pp. 7-16, 63 (*id.* at 190-199, 246); TSN, October 25, 2006, pp. 5-11 (*id.* at 413-419).

proceeded to the target area. They arrived at Barangay Bayanan at 1:45 p.m. SPO1 Cariaso and the CI parked the Toyota Revo infront of the house of "Aida" while SPO1 Platon and the rest of the team, who rode on another vehicle (Isuzu Crosswind), waited at a distance. As agreed during the briefing, SPO1 Platon positioned himself in a spot where he could see SPO1 Cariaso. The other police officers posted themselves where they could see SPO1 Platon as the latter will wait for a "missed call" from SPO1 Cariaso.[10]

SPO1 Cariaso and the CI alighted from the Revo and went to the gate of the house of "Aida". They called the attention of a woman whom the CI identified as "Aida". The woman came out of the house and the CI introduced SPO1 Cariaso to her as the buyer of *shabu*. After the introduction, the CI left. The woman asked SPO1 Cariaso where the money is and he opened his belt bag to show her the money. SPO1 Cariaso in turn asked her where the *shabu* is and she replied that he should wait for Marco (appellant). SPO1 Cariaso and the woman then went inside the Revo and waited for appellant. After about five minutes, a Toyota Vios arrived and parked infront of the Revo. The woman told SPO1 Cariaso that the driver of the Vios was appellant.[11]

Appellant alighted from the Vios and went inside the Revo. The woman introduced appellant to SPO1 Cariaso as the buyer. After appellant ascertained that SPO1 Cariaso had the money with him, he went down and got something from the Vios. When appellant returned, he was carrying an item wrapped in newspaper. Inside the Revo, appellant uncovered the item and SPO1 Cariaso saw a transparent plastic sachet containing white crystalline substance which appellant handed to him. Appellant then demanded for the money. SPO1 Cariaso gave appellant the belt bag containing the marked bills and boodle money and quickly pressed the call key of his cellphone, the pre-arranged signal for the team that the sale had been consummated.[12]

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[10] *Id.* at 8-9, 14-17 (*id.* at 191-192, 197-200); *id.* at 9-12 (*id.* at 417-420).

[11] *Id*. at 17-23 (*id*. at 200-206).

[12] *Id*. at 23-32 (*id*. at 206-215); *id*. at 13-14 (*id*. at 421-422).

Within fifteen seconds, SPO1 Platon rushed towards the Revo and the rest of the team followed. The team introduced themselves as PDEA agents. SPO1 Cariaso arrested appellant and the woman ("Aida") who was later identified as Imelda G. Solema. Meanwhile, SPO1 Platon arrested the woman passenger in the Vios who was later identified as Jenny del Rosario. The seized plastic sachet containing white crystalline substance was marked by SPO1 Cariaso with his initials "EXH. A J.A.C. July 12, 2006" and signed it at the bottom. SPO1 Cariaso also recovered the marked ₱500 bills and boodle money from appellant. The three accused and the confiscated items were brought to the PDEA Regional Office in Camp Vicente Lim.[13]

At the PDEA regional office, appellant and his co-accused were booked and the confiscated items were inventoried by the investigator in the presence of SPO1 Cariaso, a media representative and a *barangay* councilor. A request for laboratory examination of the seized transparent plastic sachet containing white crystalline substance, weighing 98.51 grams, was prepared and signed by P/Supt. Bargamento. There were also requests made for the physical examination and drug test of the arrested persons. The request for laboratory examination and the specimen marked "EXH. A J.A.C. July 12, 2006" were brought by SPO1 Cariaso to the Philippine National Police (PNP) Regional Crime Laboratory Office 4A. Result of the chemical analysis performed by Pol. Insp. Apostol, Jr. showed that the said specimen is positive for methamphetamine hydrochloride or *shabu*. Appellant and his co-accused likewise were found positive for methamphetamine based on screening and confirmatory test done on their urine samples.[14]

The prosecution presented and offered the following evidence: (1) Pre-Operation Report dated July 12, 2006 submitted by PCI Ablang (Team Leader) and noted by P/Supt. Bargamento;

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[13] *Id*. at 30, 33-36 (*id*. at 213, 216-219); *id*. at 14-17 (*id*. at 422-425); TSN, August 10, 2006, pp. 20-22 (*id*. at 287-289).

[14] *Id*. at 36-46 (*id*. at 219-229); *id*. at 18-22 (*id*. at 426-430); *id*. at 22-25 (*id*. at 289-292); TSN, August 3, 2006, pp. 35-41 (*id*. at 169-175); records, pp. 333-334.

(2) Authority to Operate Outside AOR dated July 12, 2006 granted by PDEA Police Chief Inspector Emmanuel Salvador L. Enriquez; (3) Certificate of Coordination dated July 12, 2006 from PDEA; (4) Request for Laboratory Examination dated July 12, 2006 of specimen marked "EXH. A J.A.C. July 12, 2006" with signature of poseur-buyer; (5) Request for Drug Test of arrested persons dated July 12, 2006 signed by P/Supt. Bargamento; (6) Request for Physical/Medical Examination of arrested persons signed by P/Supt. Bargamento; (7) Chemistry Report No. D-267-06 dated July 13, 2006 submitted by Pol. Insp. Apostol, Jr. showing positive findings on specimen marked "EXH. A J.A.C. July 12, 2006"; (8) Chemistry Report No. CRIMDT-268-06 to 270-06 submitted by Pol. Insp. Apostol, Jr. showing positive findings on the urine samples taken from appellant and his co-accused; (9) Certification dated July 12, 2006 issued by Medico-Legal Officer Dr. Roy A. Camarillo of the PNP Regional Crime Laboratory 4A stating that "there are no external signs of recent application of any form of trauma noted during the time of examination" on the persons of appellant and his co-accused; (10) Certificate of Inventory prepared by PCI Ablang and signed/witnessed by a media representative (Lyka Manalo) and Barangay Councilor (Jerusalem Jordan); (11) One transparent plastic sachet containing white crystalline substance with markings "EXH. A J.A.C. July 12, 2006" and signed by poseur-buyer SPO1 Cariaso; (12) Affidavit of Poseur-Buyer dated July 13, 2006 executed by SPO1 Cariaso; (13) Affidavit of Back-Up/Arresting Officer dated July 13, 2006 executed by SPO1 Platon; (14) Booking Sheet and Arrest Reports of appellant and his co-accused containing their fingerprints, but which only Imelda Solema signed while appellant and Jenny del Rosario refused to sign; and (15) four pieces ₱500 bills marked money with serial numbers CM180235, YA867249, ZS853938 and ZW337843.[15]

Version of the Defense

Appellant's defense is anchored on the claim that no buy-bust took place. He testified that on July 12, 2006, at around

[15] Records, pp. 327-344.

1:30 p.m., he went to the house of his co-accused Imelda Solema whom he knows is called "Im". The purpose of his visit to Im was to rent her apartment because his girlfriend is arriving from Japan. Along the way, he saw Jenny del Rosario with her baby and let them rode on his car (Vios) as they were going the same way. Upon reaching Im's house at 1:45 p.m., he parked his vehicle infront of said house but a *barangay tanod* told him not to park there as it was a towing area. And so he parked his Vios inside the garage of Im's house which has a steel gate and knocked at its door. Meanwhile, Jenny del Rosario was left inside the Vios.[16]

Upon entering the house of Im, appellant claimed he was immediately grabbed by a man who made him lie down. He would later learn at PDEA that the man's name is "Toto" and his female companion is Ma'am Carla. These PDEA agents took his belt bag containing cash (₱48,000) and his jewelry. He was also handcuffed and brought inside his car where Toto, Ablang and a driver also boarded. He saw SPO1 Cariaso for the first time at the PDEA office. He likewise does not know SPO1 Platon. At the PDEA office, appellant and his co-accused were photographed after they were made to change clothes. Appellant further claimed that PCI Ablang demanded money (₱1 million) from him in exchange for his release. When he was unable to give such amount, they just detained him and his co-accused. Their urine samples were taken and submitted for drug testing.[17]

As to the *shabu* allegedly seized from him in a buy-bust operation, appellant vehemently denied having such drug in his possession at the time. They have already been detained for two days when they were photographed with the said item. The taking of photographs was done in the presence of PDEA personnel, *barangay* officials from Canlubang and the media.[18]

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[16] TSN, November 30, 2006, pp. 3-8 (*id.* at 472-477).

[17] *Id*. at 9-18 (*id*. at 478-487).

[18] *Id*. at 19-21 (*id*. at 488-490).

On cross-examination, appellant explained that he had talked to his lawyer regarding the filing of a case against the PDEA officers who tried to extort money from him but his lawyer suggested they should first do something about this case. He added that he does not know of any reason why SPO1 Cariaso is accusing him of selling an illegal drug.[19]

Imelda G. Solema testified that on July 12, 2006 between 1:00 to 2:00 in the afternoon, she was inside her house watching TV together with her seven-year-old son when some persons carrying long firearms arrived asking if she is "Aida". She shouted to them that she is not "Aida" but "Im." These armed persons searched her house for *shabu* and when she shouted she was pushed into a chair. After ten minutes of searching, nothing was found in her house. When somebody knocked on the door, one of the armed men opened it and they saw appellant. They pulled appellant inside, poked a gun at him, made him lie down and handcuffed him. She and appellant were brought outside the house and boarded into the Revo. They waited for the other car for the armed men to board appellant there. Thereafter, they were brought to the PDEA office in Canlubang where they were detained.[20]

On cross-examination, Imelda Solema admitted that appellant was her friend even prior to their arrest because he was the "*kumpare*" of her sister. Appellant went to her house at the time as they had an agreement that he will rent one of the units of her apartment.[21]

The defense presented another witness, Rowena S. Gutierrez, a *siomai/sago* vendor who allegedly saw what transpired at the house of Imelda Solema from a distance of 6-8 meters. She testified that on July 12, 2006 at past 2:00 p.m., a red car immediately parked infront of the house of Imelda Solema, whom they call "Im." A man and a woman (whom she later learned

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[19] TSN, February 28, 2007, pp. 7-10, 12-13 (*id*. at 502-505, 507-508).

[20] TSN, May 3, 2007, pp. 4-9 (*id*. at 518-523).

[21] *Id*. at 17-18 (*id*. at 531-532).

were police officers) alighted from said car and entered the house of Im. Not too long after, a silver car also arrived which was supposed to park in the area but there were *barangay tanods* and so it parked instead in the garage of the mother of Im. She later learned that the driver of the silver car was appellant. Appellant went out of his car and proceeded to Im's house. When appellant was already inside Im's house, two vehicles (Revo and Crosswind) suddenly arrived and there were armed men who alighted from said vehicles and entered Im's house. Thereafter, she heard Im crying as she was being held by a woman and a man. The armed men forced Im and appellant into the Revo. The persons left were a female and a child who eventually drove the silver car.[22]

On cross-examination, the witness admitted that the relatives of her friend Im asked her to testify because the others who also saw the incident were afraid to do so.[23]

Ruling of the RTC

The RTC found that the police officers complied with all the requirements in conducting a buy-bust operation, and that their testimonies were spontaneous, straightforward and consistent on all material points. On the other hand, the RTC observed that the testimonies of defense witnesses do not jibe or are inconsistent with each other. It held that appellant's denial of the crime charged is a negative self-serving evidence and cannot prevail over the positive and straightforward testimonies of the witnesses for the prosecution who, being police officers, are presumed to have performed their duties in accordance with law, and who have no reason to fabricate the charges against the accused.

Convinced that appellant and his co-accused Imelda Solema had conspired in selling *shabu*, the RTC noted that it was the latter who called up the former about the offer of the poseur-buyer SPO1 Cariaso to buy *shabu*. Appellant thus brought the

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[22] TSN, August 30, 2007, pp. 5-11 (*id.* at 552-558).

[23] *Id.* at 19-20 (*id.* at 566-567).

pack of *shabu* to be sold to SPO1 Cariaso, unaware of the entrapment plan of the police officers. As to their warrantless arrest, the RTC held that such arrest was legal since the accused were caught *in flagrante delicto* selling *shabu*, a dangerous drug, to a poseur-buyer who turned out to be a police officer, in a legitimate buy-bust operation.

Accordingly, the RTC rendered judgment as follows:

> WHEREFORE, premises considered and finding the accused MARCO ALEJANDRO *y* PINEDA and IMELDA SOLEMA *y* GUTIERREZ GUILTY of violating Sec. 5 of the Comprehensive Dangerous Drugs Act of 2002 beyond reasonable doubt, they are sentenced to LIFE IMPRISONMENT and to suffer all the accessory penalties provided by law and to pay a fine of ONE MILLION PESOS (Php 1,000,000.00) each with subsidiary imprisonment in case of insolvency.
>
> The Acting Branch Clerk of Court is directed to transmit the subject "*shabu*" contained in a transparent plastic sachet which was marked as Exhibit "J" to the Philippine Drug Enforcement Agency for proper disposition.
>
> Accused MARCO ALEJANDRO *y* PINEDA is ordered committed to the National Bilibid Prisons and accused IMELDA SOLEMA *y* GUTIERREZ is ordered committed to the Philippine Correctional for Women until further orders.
>
> The preventive imprisonment undergone by the accused shall be credited in their favor.
>
> SO ORDERED.[24]

Ruling of the CA

By Decision dated November 11, 2011, the CA affirmed appellant's conviction. The CA rejected appellant's argument that there is no proof beyond reasonable doubt that a sale transaction of illegal drugs took place as there appeared to be no prior meeting or conversation between him and appellant, and hence they could not have agreed on a price certain for a

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[24] Records, p. 595.

specified weight of drugs to be sold. It stressed that from the prosecution's narration of facts, the basis of the meeting between the poseur-buyer and "Aida" was the arrangement made by the CI for the sale of *shabu*; hence there was already an agreement for the sale of 100 grams of *shabu* for the amount of ₱360,000.00.

The CA was likewise convinced that the *corpus delicti* of the crime has been established. It held that the failure to strictly comply with the requirements of Section 21, Article II of R.A. No. 9165 does not necessarily render an accused's arrest illegal or the items seized from him inadmissible.

Our Ruling

The appeal lacks merit.

Firmly established in our jurisprudence is the rule that in the prosecution for illegal sale of dangerous drugs, the following essential elements must be proven: (1) that the transaction or sale took place; (2) the *corpus delicti* or the illicit drug was presented as evidence; and (3) that the buyer and seller were identified. Implicit in all these is the need for proof that the transaction or sale actually took place, coupled with the presentation in court of the confiscated prohibited or regulated drug as evidence.[25]

What determines if there was, indeed, a sale of dangerous drugs in a buy-bust operation is proof of the concurrence of all the elements of the offense, to wit: (1) the identity of the buyer and the seller, the object, and the consideration; and (2) the delivery of the thing sold and the payment therefor.[26]

The above elements were satisfactorily established by the prosecution. Poseur-buyer SPO1 Cariaso identified appellant as the seller of *shabu*. While the police officers were initially unaware of the identity of appellant, as their CI had only informed

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[25] *People v. Salcena*, G.R. No. 192261, November 16, 2011, 660 SCRA 349, 358, citing *People v. De la Cruz*, 591 Phil. 259, 269 (2008).

[26] *People v. Mantalaba*, G.R. No. 186227, July 20, 2011, 654 SCRA 188, 198.

them about appellant's co-accused, "Aida" (Imelda Solema) with whom the CI had set up a drug deal for 100 grams of *shabu* for the price of ₱360,000.00, appellant's presence at the buy-bust scene, and his act of delivering the *shabu* directly to SPO1 Cariaso clearly identified him as the seller who himself demanded and received the payment from SPO1 Cariaso after giving the *shabu* to the latter.

Appellant's arrival at the house of Imelda Solema at the appointed time of the sale transaction arranged the previous day by the CI, and with Imelda Solema informing SPO1 Cariaso that they should wait for appellant after SPO1 Cariaso asked for the *shabu*, were clear indications that they acted in coordination and conspiracy to effect the sale of *shabu* to a buyer brought by the CI and who turned out to be a police officer detailed with the PDEA. SPO1 Cariaso placed his initials and date of buy-bust on the plastic sachet containing white crystalline substance sold to him by appellant. After Forensic Chemical Officer Pol. Insp. Apostol, Jr. conducted a chemical analysis of the said specimen, the result yielded positive for methamphetamine hydrochloride or *shabu*, a dangerous drug. The same specimen was presented in court as evidence after it was properly identified by SPO1 Cariaso and Pol. Insp. Apostol, Jr. to be the same substance handed by appellant to SPO1 Cariaso and examined by Pol. Insp. Apostol, Jr.

SPO1 Platon corroborated the testimony of SPO1 Cariaso that they conducted a buy-bust operation as he positioned himself across the street 15 meters from the house of Imelda Solema. From his vantage, SPO1 Platon saw the following transpired: SPOI Cariaso accompanied by the CI in front of the house of Imelda Solema; SPO1 Cariaso conversing with Imelda Solema; the subsequent arrival of appellant on board the Vios; appellant going inside the Revo where SPO1 Cariaso and Imelda Solema waited for him; appellant getting something from the Vios and returning to the Revo carrying the said item. Upon hearing the call from SPO1 Cariaso's cellphone, SPO1 Platon immediately proceeded to the scene and arrested Jenny del Rosario who was still inside the Vios. At that moment, SPO1 Cariaso had already arrested appellant and Imelda Solema, confiscated the transparent

plastic sachet containing white crystalline substance and recovered the marked money from appellant.

Clearly, all the elements of the crime were established by both the oral and object evidence presented in court. It is settled that in cases involving violations of the Dangerous Drugs Act, credence is given to prosecution witnesses who are police officers for they enjoy the presumption of having performed their duties in a regular manner, unless, of course, there is evidence to the contrary suggesting ill-motive on their part or deviation from the regular performance of their duties.[27] Since no proof of such ill-motive on the part of the PDEA buy-bust team was adduced by appellant, the RTC and CA did not err in giving full faith and credence to the prosecution's account of the buy-bust operation. This Court has repeatedly stressed that a buy-bust operation (which is a form of entrapment) is a valid means of arresting violators of R.A. No. 9165.[28]

Appellant assails the CA in not correctly interpreting the requirements set forth in Section 21, Article II of R.A. No. 9165 and its implementing rules and regulations. He harps on the failure to immediately mark the seized *shabu* at the scene of the incident and photograph the same, and the inventory of the confiscated items which was not shown to have been done in the presence of the accused. As to the absence of testimony by the investigator and the receiving employee of the PNP Regional Crime Laboratory, appellant argues this is fatal to the case of the prosecution. He thus contends that the chain of custody was broken in this case.

We sustain the CA's ruling on the chain of custody issue.

Under Section 1(b) of Dangerous Drugs Board Regulation No. 1, Series of 2002, which implements R.A. No. 9165, "chain of custody" is defined as the duly recorded authorized movements

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[27] *People v. De Guzman,* 564 Phil. 282, 293 (2007); *People v. Jocson,* 565 Phil. 303, 308 (2007).

[28] *People v. Sevilla,* 607 Phil. 267, 270 (2009); *People v. De Guzman, id.* at 292; *Ching v. People,* 590 Phil. 725, 747 (2008).

and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction. Such record of movements and custody of seized item shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when such transfer of custody were made in the course of safekeeping and use in court as evidence, and the final disposition.

Section 21, Article II of R.A. No. 9165 laid down the procedure for the custody and disposition of confiscated, seized or surrendered dangerous drugs.

Section 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment*. – The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof;

(2) Within twenty-four (24) hours upon confiscation/seizure of dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment, the same shall be submitted to the PDEA Forensic Laboratory for a qualitative and quantitative examination;

(3) A certification of the forensic laboratory examination results, which shall be done under oath by the forensic laboratory examiner, shall be issued within twenty-four (24) hours after the receipt of

the subject item/s: *Provided*, That when the volume of the dangerous drugs, plant sources of dangerous drugs, and controlled precursors and essential chemicals does not allow the completion of testing within the time frame, a partial laboratory examination report shall be provisionally issued stating therein the quantities of dangerous drugs still to be examined by the forensic laboratory: *Provided, however*, That a final certification shall be issued on the completed forensic laboratory examination on the same within the next twenty-four (24) hours;

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On the other hand, Section 21(a) of the Implementing Rules and Regulations (IRR) of R.A. No. 9165 reads:

(a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof: Provided, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; Provided, further, that **non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items**[.] (Emphasis supplied.)

In this case, while SPO1 Cariaso testified that he immediately marked the transparent plastic sachet containing white crystalline substance sold to him by appellant, there was no statement as to whether such marking was made at the place of arrest. From the records it is clear that such marking was done upon reaching the PDEA office before its turnover to the investigator on duty. What is important is that the seized specimen never left the custody of SPO1 Cariaso as he was present throughout the physical inventory being conducted by the said investigator.

This Court has already ruled in several cases that the failure of the prosecution to show that the police officers conducted the required physical inventory and photograph of the evidence confiscated pursuant to the guidelines, is not fatal. It does not automatically render accused-appellant's arrest illegal or the items seized/confiscated from him inadmissible. What is of utmost importance is the preservation of the integrity and evidentiary value of the seized items, as the same would be utilized in the determination of the guilt of the accused.[29]

Records reveal that only the marked money was photographed at the PDEA office. The Certificate of Inventory, though not signed by the accused, was duly signed by team leader PCI Ablang, a representative from the media and a *barangay* councilor. We thus find substantial compliance with the requirements of Section 21 of R.A. No. 9165 and IRR.

Time and again, jurisprudence is consistent in stating that substantial compliance with the procedural aspect of the chain of custody rule does not necessarily render the seized drug items inadmissible.[30] In the instant case, although the police officers did not strictly comply with the requirements of Section 21, Article II of R.A. No. 9165, their noncompliance did not affect the evidentiary weight of the drugs seized from appellant as the chain of custody of the evidence was shown to be unbroken under the circumstances of the case.

In the case of *People v. Kamad*,[31] the Court enumerated the links that the prosecution must establish in the chain of custody in a buy-bust situation to be as follows: *first*, the seizure and

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[29] *People v. Brainer*, G.R. No. 188571, October 10, 2012, 683 SCRA 505, 525, citing *People v. Abedin*, G.R. No. 179936, April 11, 2012, 669 SCRA 322, 337; See also *People v. Rivera*, 590 Phil. 894, 913 (2008); *People v. Rosialda*, G.R. No. 188330, August 25, 2010, 629 SCRA 507, 520-521; and *People v. Llamado*, 600 Phil. 591, 599 (2009).

[30] *People v. Hambora*, G.R. No. 198701, December 10, 2012, 687 SCRA 653, 661, citing *People v. Cardenas*, G.R. No. 190342, March 21, 2012, 668 SCRA 827, 836-837.

[31] G.R. No. 174198, January 19, 2010, 610 SCRA 295, 307-308.

marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; *second*, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; *third*, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and *fourth*, the turnover and submission of the marked illegal drug seized from the forensic chemist to the court.[32]

The *first* link in the chain of custody starts with the seizure of the transparent plastic sachet containing *shabu* during the buy-bust operation. Records show that from the time appellant handed to SPO1 Cariaso the said item, only SPO1 Cariaso was in possession of the same until it was brought to the PDEA office. SPO1 Cariaso himself marked the said sachet of *shabu* with his initials and date of buy-bust: "EXH. A J.A.C. July 12, 2006." While the marking was not immediately made at the crime scene, it does not automatically impair the integrity of the chain of custody as long as the integrity and evidentiary value of the seized items have been preserved.[33]

The *second* link is the turnover of the *shabu* at the PDEA office. SPO1 Cariaso testified that he turned over the seized plastic sachet containing *shabu* with his markings "EXH. A J.A.C. July 12, 2006" to the investigator who proceeded with the inventory thereof, along with the marked money also confiscated from appellant. He was present next to the investigator while the latter was conducting the inventory.

The *third* link constitutes the delivery of the request for laboratory examination and the specimen to the PNP Regional Crime Laboratory. It was likewise SPO1 Cariaso who brought the said request and the specimen to the PNP Regional Crime Laboratory on the same day. He personally turned over the specimen marked "EXH. A J.A.C. July 12, 2006" to the receiving

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[32] *People v. Salcena, supra* note 25, at 367.

[33] *People v. Mantawil*, G.R. No. 188319, June 8, 2011, 651 SCRA 642, 657, citing *People v. Morales*, G.R. No. 188608, February 9, 2011, 642 SCRA 612, 623.

clerk as evidenced by the stamp receipt on the said request bearing the time and date received as "10:25 PM July 12, 2006."[34]

The *fourth* link seeks to establish that the specimen submitted for laboratory examination is the one presented in court. Forensic Chemical Officer Pol. Insp. Apostol, Jr. testified that the transparent plastic sachet containing white crystalline substance which was marked "EXH. A J.A.C. July 12, 2006", was given to him by the receiving clerk. Within twenty-four hours, he conducted the chemical analysis by taking a representative sample from the specimen, even explaining in detail the process of testing the specimen for *shabu*. He identified the specimen with markings "EXH. A J.A.C. July 12, 2006" presented as evidence in court (Exhibit "J") as the same specimen he examined and which he found positive for methamphetamine hydrochloride or *shabu*.

The non-presentation as witnesses of other persons such as the investigator and the receiving clerk of the PNP Regional Crime Laboratory is not a crucial point against the prosecution. The matter of presentation of witnesses by the prosecution is not for the court to decide. The prosecution has the discretion as to how to present its case and it has the right to choose whom it wishes to present as witnesses.[35] Further, there is nothing in R.A. No. 9165 or in its implementing rules, which requires each and every one who came into contact with the seized drugs to testify in court. "As long as the chain of custody of the seized drug was clearly established to have not been broken and the prosecution did not fail to identify properly the drugs seized, it is not indispensable that each and every person who came into possession of the drugs should take the witness stand."[36]

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[34] Records, p. 330.

[35] See *People v. Angkob*, G.R. No. 191062, September 19, 2012, 681 SCRA 414, 427, citing *People v. Padua*, G.R. No. 174097, July 21, 2010, 625 SCRA 220, 235 further citing *People v. Zeng Hua Dian*, G.R. No. 145348, June 14, 2004, 432 SCRA 25, 32.

[36] *People v. Amansec*, G.R. No. 186131, December 14, 2011, 662 SCRA 574, 595, citing *People v. Hernandez*, 607 Phil. 617, 640 (2009).

With the unbroken chain of custody duly established by the prosecution evidence, the CA did not err in giving the same full credence in contrast to the denial by appellant who failed to substantiate his allegation of frame-up and extortion. Frame-up, like alibi, is generally viewed with caution by the Court because it is easy to contrive and difficult to disprove. It is a common and standard line of defense in prosecutions of violations of the Dangerous Drugs Act.[37] To substantiate such defense, the evidence must be clear and convincing and should show that the members of the buy-bust team were inspired by any improper motive or were not properly performing their duty. Otherwise, the police officers' testimonies on the operation deserve full faith and credit.[38] No such evidence was presented by appellant in this case. The CA even quoted in part the decision of the RTC which highlighted the irreconcilable inconsistencies in the testimonies of defense witnesses on what transpired during the buy-bust operation.

Under Section 5, Article II of R.A. No. 9165, the penalty of life imprisonment to death and fine ranging from ₱500,000.00 to ₱10,000,000.00 shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drug, including any and all species of *opium* poppy regardless of the quantity and purity involved. Hence, the RTC, as affirmed by the CA, correctly imposed the penalty of life imprisonment and a fine of ₱1,000,000.00.

WHEREFORE, the present appeal is **DISMISSED.** The Decision dated November 11, 2011 of the Court of Appeals in CA-G.R. CR-H.C. No. 03483 is hereby **AFFIRMED** *in toto*.

With costs against the accused-appellant.

SO ORDERED.

Sereno, C.J. (Chairperson), Leonardo-de Castro, Bersamin, and *Reyes, JJ.,* concur.

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[37] *People v. Del Monte,* 575 Phil. 576, 588 (2008).

[38] *People v. Capalad,* 602 Phil. 1083, 1094 (2009).

SECOND DIVISION

[G.R. No. 207983. April 7, 2014]

WENPHIL CORPORATION, *petitioner, vs.* **ALMER R. ABING and ANABELLE M. TUAZON,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; ILLEGAL DISMISSAL; REINSTATEMENT ORDER IS IMMEDIATELY EXECUTORY AND IS NOT AFFECTED BY THE EXISTENCE OF AN ONGOING APPEAL; THE EMPLOYER HAS THE DUTY TO REINSTATE THE EMPLOYEE IN THE INTERIM PERIOD UNTIL A REVERSAL IS DECREED BY A HIGHER COURT OR TRIBUNAL; RATIONALE.— Under Article 223 of the Labor Code, "**the decision of the Labor Arbiter reinstating a dismissed or separated employee, insofar as the reinstatement aspect is concerned, shall immediately be executory, even pending appeal**. The employee shall either be admitted back to work under the same terms and conditions prevailing prior to his dismissal or separation, or at the option of the employer, merely reinstated in the payroll. The posting of a bond by the employer shall not stay the execution for reinstatement." The Court discussed reason behind this legal policy in *Aris v. NLRC*, where it explained: **In authorizing execution pending appeal of the reinstatement aspect of a decision of the Labor Arbiter reinstating a dismissed or separated employee, the law itself has laid down a compassionate policy which, once more, vivifies and enhances the provisions of the 1987 Constitution on labor and the working-man.** These provisions are the quintessence of the aspirations of the workingman for recognition of his role in the social and economic life of the nation, for the protection of his rights, and the promotion of his welfare… These duties and responsibilities of the State are imposed not so much to express sympathy for the workingman as to forcefully and meaningfully underscore labor as a primary social and economic force, which the Constitution also expressly affirms with equal intensity. Labor is an indispensable partner for the nation's progress and stability.

2. ID.; ID.; ID.; ID.; PAYROLL REINSTATEMENT; EVEN IF THE EMPLOYER'S APPEAL TURNS THE TIDE IN ITS FAVOR, THE REINSTATED EMPLOYEE HAS NO DUTY TO RETURN OR REIMBURSE THE SALARY HE RECEIVED DURING THE PERIOD THAT THE LOWER COURT'S GOVERNING DECISION WAS FOR THE EMPLOYEE'S ILLEGAL DISMISSAL.— Since the decision is immediately executory, it is the duty of the employer to comply with the order of reinstatement, which can be done either actually or through payroll reinstatement. As provided under Article 223 of the Labor Code, this immediately executory nature of an order of reinstatement is not affected by the existence of an ongoing appeal. The employer has the duty to reinstate the employee in the interim period until a reversal is decreed by a higher court or tribunal. In the case of payroll reinstatement, even if the employer's appeal turns the tide in its favor, the reinstated employee has no duty to return or reimburse the salary he received during the period that the lower court or tribunal's governing decision was for the employee's illegal dismissal. Otherwise, the situation would run counter to the immediately executory nature of an order of reinstatement.

3. ID.; ID.; ID.; AN ILLEGALLY DISMISSED EMPLOYEE IS ENTITLED TO REINSTATEMENT TO HIS FORMER POSITION WITHOUT LOSS OF SENIORITY RIGHTS AND THE PAYMENT OF BACKWAGES FROM HIS ILLEGAL DISMISSAL UP TO HIS ACTUAL REINSTATEMENT.— The reinstatement salaries due to the respondents were, by their nature, payment of unworked backwages. These were salaries due to the respondents because they had been prevented from working despite the LA and the NLRC findings that they had been illegally dismissed. We point out that reinstatement and backwages are two separate reliefs available to an illegally dismissed employee. The normal consequences of a finding that an employee has been illegally dismissed are: ***first***, that the employee becomes entitled to reinstatement to his former position without loss of seniority rights; and ***second***, the payment of backwages covers the period running from his illegal dismissal up to his actual reinstatement. These two reliefs are not inconsistent with one another and the labor arbiter can award both simultaneously.

4. ID.; ID.; ID.; ID.; THE GRANT OF SEPARATION PAY IS A PROPER SUBSTITUTE ONLY FOR REINSTATEMENT BUT NOT FOR THE PAYMENT OF BACKWAGES; RATIONALE.— [T]he relief of separation pay may be granted in lieu of reinstatement but it cannot be a substitute for the payment of backwages. In instances where reinstatement is no longer feasible because of strained relations between the employee and the employer, separation pay should be granted. In effect, an illegally dismissed employee should be entitled to either reinstatement – if viable, or separation pay if reinstatement is no longer be viable, **plus backwages** in either instance. The rationale for such policy of distinction was vividly explained in *Santos v. NLRC* under these terms: xxx. **In the instant case, the grant of separation pay was a substitute for immediate and continued re-employment with the private respondent Bank. The grant of separation pay did not redress the injury that is intended to be relieved by the second remedy of backwages, that is, the loss of earnings that would have accrued to the dismissed employee during the period between dismissal and reinstatement. Put a little differently, payment of backwages is a form of relief that restores the income that was lost by reason of unlawful dismissal; separation pay, in contrast, is oriented towards the immediate future, the transitional period the dismissed employee must undergo before locating a replacement job. It was grievous error amounting to grave abuse of discretion on the part of the NLRC to have considered an award of separation pay as equivalent to the aggregate relief constituted by reinstatement plus payment of backwages under Article 280 of the Labor Code**. The grant of separation pay was a proper substitute only for reinstatement; it could not be an adequate substitute both for reinstatement and for backwages.

5. ID.; ID.; ID.; AWARD OF SEPARATION PAY AND PAYMENT OF BACKWAGES, DISTINGUISHED.— We emphasize that the basis for the payment of backwages is different from that of the award of separation pay. ***Separation pay*** is granted where reinstatement is no longer advisable because of strained relations between the employee and the employer. ***Backwages*** represent compensation that should have been earned but were not collected because of the unjust dismissal. The basis for computing separation pay is usually the length of the employee's past service, while that for

backwages is the actual period when the employee was unlawfully prevented from working.

6. ID.; ID.; ID.; A COMPROMISE AGREEMENT WHICH PROVIDES THAT THE EMPLOYER'S OBLIGATION TO PAY THE BACKWAGES OF THE EMPLOYEES SHALL END THE MOMENT THE NATIONAL LABOR RELATIONS COMMISSION (NLRC) MODIFIES THE ILLEGAL DISMISSAL DECISION OF THE LABOR ARBITER IS VIOLATIVE OF THE LABOR CODE'S POLICY ENTITLING ILLEGALLY DISMISSED EMPLOYEES TO THEIR RIGHT TO BACKWAGES EVEN DURING THE PERIOD OF APPEAL.— While it is true that a compromise agreement is binding between the parties and becomes the law between them, it is also a rule that to be valid, a compromise agreement must not be contrary to law, morals, good customs and public policy. In the present case, the parties' compromise agreement simply provided that Wenphil's obligation to pay the respondents' backwages shall end the moment the NLRC modifies, amends or reverses the illegal dismissal decision of LA Bartolabac. On its face, there is nothing invalid with such stipulation. Indeed, had the NLRC reversed the LA, the obligation to pay backwages would have stopped. The NLRC, however, did not decree a reversal of the finding of illegal dismissal. In fact, it affirmed the illegal dismissal conclusion, confining itself merely to a modification of the consequences of the illegal dismissal – from reinstatement to the payment of separation pay. This "modification" of course we cannot accept; the option under the legal policy is solely limited to a ruling that the respondents *had not been illegally* dismissed. Otherwise, we would be violating the Labor Code's policy entitling illegally dismissed employees to their right to backwages even during the period of appeal.

7. ID.; ID.; ID.; BACKWAGES; THE PERIOD FOR COMPUTING THE BACKWAGES DUE TO THE EMPLOYEES DURING THE PERIOD OF APPEAL SHOULD END ON THE DATE THAT A HIGHER COURT REVERSED THE LABOR ARBITRATION RULING OF ILLEGAL DISMISSAL, NOT THE DATE OF THE ULTIMATE FINALITY OF SUCH REVERSAL.— Among [the] views, the commanding one is the rule in *Pfizer*, which merely echoes the rulings we made in the cases of *Roquero v.*

Philippine Airlines and *Garcia v. Philippine Airlines* that the period for computing the backwages due to the respondents during the period of appeal should end on the date that a ***higher court*** reversed the labor arbitration ruling of illegal dismissal. In this case, the higher court which first reversed the NLRC's ruling was not the SC but rather the CA. In this light, the CA was correct when it found that that the period of computation should end on August 27, 2003. The date when the SC's decision became final and executory need not matter as the rule in *Roquero, Garcia* and *Pfizer* merely referred to **the date of reversal**, not the date of the ultimate finality of such reversal.

APPEARANCES OF COUNSEL

Laguesma Magsalin Consulta & Gastardo Law Offices for petitioner.

Joselito R. Rance, ESQ. for respondents.

D E C I S I O N

BRION, *J.*:

We resolve this petition for review on *certiorari*[1] under Rule 45 of the Rules of Court, challenging the August 31, 2012 decision[2] and the June 20, 2013 resolution[3] (*assailed CA rulings*) of the Court of Appeals (*CA*) in CA-G.R. SP No. 117366.

These assailed CA rulings annulled and set aside the March 26, 2010 decision[4] and September 15, 2010[5] resolution (*NLRC rulings*) of the National Labor Relations Commission (*NLRC*) in NLRC CA No. 02-8233-01 (R1-08).

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[1] *Rollo,* pp. 7-22.

[2] Penned by Associate Justice Marina L. Buzon, and concurred in by Associate Justices Mario L. Guariña and Santiago Javier Ranada; *id.* at 27-41.

[3] *Id.* at 43-45.

[4] *Id.* at 171-177.

[5] *Id.* at 188-190.

The NLRC rulings, in turn, fully affirmed the November 16, 2007 order[6] of the Labor Arbiter (*LA*) in NLRC-NCR Case Nos. 30-03-00993-00 and 30-03-01020-00. The LA's order found that an illegal dismissal took place. Thus, the LA directed petitioner Wenphil Corporation (*Wenphil*) to pay respondents Almer Abing and Anabelle Tuazon (*respondents*) their backwages for the period from February 15, 2002 to November 8, 2002, pursuant to the rule that an order of reinstatement is immediately executory even pending appeal.[7]

Factual Antecedents

This case stemmed from a complaint for illegal dismissal filed by the respondents against Wenphil, docketed as NLRC NCR Case No. 30-03-00993-00.

On December 8, 2000, LA Geobel A. Bartolabac ruled[8] that the respondents had been illegally dismissed by Wenphil. According to the LA, the allegation of serious misconduct against the respondents had no factual and legal basis.[9] Consequently, LA Bartolabac ordered Wenphil to immediately reinstate the respondents to their respective positions or to equivalent ones, whether actuall or in the payroll. Also, the LA ordered Wenphil to pay the respondents their backwages from February 3, 2000 until the date of their actual reinstatement.[10]

Because of the unfavorable LA decision, Wenphil appealed to the NLRC on April 16, 2001[11]. In the meantime, the respondents moved for the immediate execution of the LA's December 8, 2000 decision.[12]

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[6] *Id*. at 148-153.

[7] LABOR CODE, Article 223.

[8] *Rollo,* pp. 46-67.

[9] *Id*. at 62.

[10] *Id*. at 67.

[11] *Id*. at 9.

[12] *Id*.

On October 29, 2001, Wenphil and the respondents entered into a compromise agreement[13] before LA Bartolabac. They agreed to the respondents' payroll reinstatement while Wenphil's appeal with the NLRC was ongoing. Wenphil also agreed to pay the accumulated salaries of the respondents for the payroll period from April 5, 2001 until October 15, 2001.[14] As for the remaining payroll period starting October 16, 2001, Wenphil committed itself to credit the respective salaries of the respondents to their ATM payroll accounts *until such time that the questioned decision of LA Bartolabac* is either ***modified, amended or reversed*** *by the Honorable National Labor Relations Commission*.[15]

On January 30, 2002, the NLRC issued a resolution[16] affirming LA Bartolabac's decision with modifications. Instead of ordering the respondents' reinstatement, the NLRC directed Wenphil to pay the respondents their respective separation pay at the rate of one (1) month salary for every year of service. Also, the NLRC found that while the respondents had been illegally dismissed, they had not been illegally suspended. Thus, the period from February 3 to February 28, 2000 during which the respondents were on preventive suspension – was excluded by the NLRC in the computation of the respondents' backwages.[17]

Subsequently, Wenphil moved for the reconsideration[18] of the NLRC's January 30, 2002 resolution, but the NLRC denied the motion in another resolution dated September 24, 2002.[19]

Wenphil thereafter went up to the CA *via* a petition for *certiorari* to question the NLRC's January 30, 2002 and

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[13] *Id*. at 98-100.

[14] *Id*. at 99.

[15] *Id*.

[16] *Id*. at 101-108.

[17] *Id*. at 107.

[18] *Id*. at 10.

[19] *Id*. at 109-110.

September 24, 2002 resolutions.[20] On August 27, 2003, the CA rendered its decision[21] reversing the NLRC's finding that the respondents had been illegally dismissed. According to the CA, there was enough evidence to show that the respondents had been guilty of serious misconduct; thus, their dismissal was for a valid cause.[22] The respondents moved for the reconsideration of the CA's decision.[23] In a resolution[24] dated February 23, 2004, the CA denied the respondents' motion.

On appeal to the Supreme Court (*SC*) *via* Rule 45 (docketed as G.R. No. 162447[25] and dated December 27, 2006), the SC denied the respondents petition for review on *certiorari*[26] and affirmed the CA's August 27, 2003 decision and February 23, 2004 resolution. The respondents did not file any motion for reconsideration to question the SC's decision; thus, the decision became final and executory on February 15, 2007.[27]

The Labor Arbitration Rulings

Sometime after the SC's decision in G.R. No. 162447 became final and executory, the respondents filed with LA Bartolabac a motion for computation and issuance of writ of execution.[28] The respondents asserted in this motion that although the CA's ruling on the absence of illegal dismissal (as affirmed by the SC) was adverse to them, *under the law and settled jurisprudence, they were still entitled to backwages from the time of their*

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[20] *Id.* at note 19.

[21] *Id.* at 111-127.

[22] *Id.* at 118.

[23] *Id.* at note 19.

[24] *Id.* at 125-127.

[25] *Anabelle Muaje-Tuazon and Almer R. Abing v. Wenphil Corporation, Elizabeth P. Orbita, and the Court of Appeals*, G.R. No. 162447, December 27, 2006, 511 SCRA 521.

[26] *Id.* at note 19.

[27] *Id.* at 138.

[28] *Id.* at 139-141; on August 16, 2007.

dismissal until the NLRC's decision finding them to be illegally dismissed was reversed with finality.[29]

LA Bartolabac granted the respondents' motion and, in an order dated November 16, 2007,[30] directed Wenphil to pay each complainant their salaries on reinstatement covering the period from February 15, 2002 (the date Wenphil last paid the respondents' respective salaries) to November 8, 2002 (since the NLRC's decision finding the respondents illegally dismissed became final and executory on February 28, 2002).

Both parties appealed to the NLRC to question LA Bartolabac's November 16, 2007 order.[31] Wenphil argued that the respondents were no longer entitled to payment of backwages in view of the compromise agreement they executed on October 29, 2001. According to Wenphil, the compromise agreement provided that Wenphil's obligation to pay the respondents' backwages should cease as soon as LA Bartolabac's decision was "*modified, amended or reversed*" by the NLRC. Since the NLRC *modified* the LA's ruling by ordering the payment of separation pay in lieu of reinstatement, then the respondents, under the terms of the compromise agreement, were entitled to backwages only up to the finality of the NLRC decision.[32]

The respondents questioned in their appeal the determined period for the computation of their backwages; they posited that the period for payment should end, not on November 8, 2002, but on February 14, 2007, since the SC's decision which upheld the CA's ruling became final and executory on February 15, 2007.[33]

The NLRC denied the parties' respective appeals in its decision dated March 26, 2010[34] and affirmed *in toto* the LA's order.

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[29] *Id*. at 140.

[30] *Id*. at 148-153.

[31] *Id*. at 154-170.

[32] *Id*. at 160.

[33] *Id*. at pp. 168-169.

[34] *Id*. at note 4.

Both parties moved for the reconsideration of the NLRC's decision but the NLRC denied their respective motions in the resolution of September 15, 2010.[35]

The CA's Ruling

In its decision dated August 31, 2012,[36] the CA reversed the NLRC rulings and prescribed a different computation period.

The CA ruled that the NLRC committed grave abuse of discretion when it affirmed the LA's computed period which was from February 15, 2002 to November 8, 2002. In arriving at this conclusion, the CA cited the case of *Pfizer v. Velasco*[37] where this Court ruled that *even if the order of reinstatement of the Labor Arbiter is reversed on appeal, it is obligatory on the part of the employer to reinstate and pay the dismissed employee's wages during the period of appeal* ***until reversal by the higher court.***[38] The CA construed this "higher court" to be the CA, not the SC.

The CA reasoned out that it was a "higher court" than the NLRC when it reversed the NLRC's rulings; thus, the period for computation should end when it promulgated its decision reversing that of the NLRC, and not on the date when the SC affirmed its decision.

The CA likewise held that the compromise agreement did not contain any waiver of rights for any award the respondents might have received when the NLRC changed or modified the LA's award.[39]

The Petition

In its petition for review with this Court, Wenphil maintained that the respondents were no longer entitled to payment of

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[35] *Id.* at note 5.

[36] *Id.* at note 2.

[37] G.R. No. 177467, March 9, 2011, 645 SCRA 135.

[38] *Id.* at 152.

[39] *Rollo,* pp. 39-40.

backwages in view of the modification of the LA's ruling by the NLRC pursuant with their October 29, 2001 compromise agreement.

Wenphil argued that the CA utterly disregarded the terms of the parties' compromise agreement whose terms were very clear; the agreement reads:

> 3. That for the payroll period from October 16-31 and thereafter, their [respondents] salaries (net of withholding tax, SSS, Philhealth and Pag-ibig) shall be credited every 10th and 25th of the succeeding months through their respective ATM employee's account **until such time that the questioned decision of the Honorable Labor Arbiter Geobel Bartolabac is modified, amended or reversed by the Honorable Labor Relations Commission**.[40] [emphasis ours]

It was Wenphil's assertion that since the NLRC's decision partly changed the decision of LA Bartolabac by ordering payment of separation pay in lieu of reinstatement, the NLRC decision was a "modification" that should operate to remove Wenphil's obligation to pay the respondents' backwages for the period of the CA's reversal of the NLRC's illegal dismissal ruling.[41] According to Wenphil, the words of the compromise agreement left no room for interpretation as to the parties' intentions;[42] as a valid agreement between the parties, it must be given effect and respected by the court.

Wenphil also contended that the CA's cited *Pfizer* case cannot apply to the present case since there was no compromise agreement in *Pfizer* where the dismissed employee waived her entitlement to backwages.[43]

Finally, Wenphil claimed that the reliefs of reinstatement and backwages are only available to illegally dismissed employees. A ruling that the respondents were still entitled to reinstatement

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[40] *Id*. at 99.

[41] *Id*. at 14-15

[42] *Id*. at 16.

[43] *Id*. at 17.

pay notwithstanding the validity of their dismissal, would amount to the court's tolerance of an unjust and equitable situation.[44]

The Court's Ruling

We resolve to **DENY** the petition.

An order of reinstatement is immediately executory even pending appeal. The employer has the obligation to reinstate and pay the wages of the dismissed employee during the period of appeal until reversal by the higher court.

Under Article 223 of the Labor Code, "**the decision of the Labor Arbiter reinstating a dismissed or separated employee, insofar as the reinstatement aspect is concerned, shall immediately be executory, even pending appeal**. The employee shall either be admitted back to work under the same terms and conditions prevailing prior to his dismissal or separation, or at the option of the employer, merely reinstated in the payroll. The posting of a bond by the employer shall not stay the execution for reinstatement."

The Court discussed reason behind this legal policy in *Aris v. NLRC*,[45] where it explained:

In authorizing execution pending appeal of the reinstatement aspect of a decision of the Labor Arbiter reinstating a dismissed or separated employee, the law itself has laid down a compassionate policy which, once more, vivifies and enhances the provisions of the 1987 Constitution on labor and the working-man. These provisions are the quintessence of the aspirations of the workingman for recognition of his role in the social and economic life of the nation, for the protection of his rights, and the promotion of his welfare… These duties and responsibilities of the State are imposed not so much to express sympathy for the workingman as to forcefully and meaningfully underscore labor as a primary social and economic

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[44] *Id.* at 19.

[45] G.R. No. 90501, August 5, 1991, 200 SCRA 246.

force, which the Constitution also expressly affirms with equal intensity. Labor is an indispensable partner for the nation's progress and stability. [emphasis ours]

Since the decision is immediately executory, it is the duty of the employer to comply with the order of reinstatement, which can be done either actually or through payroll reinstatement. As provided under Article 223 of the Labor Code, this immediately executory nature of an order of reinstatement is not affected by the existence of an ongoing appeal. The employer has the duty to reinstate the employee in the interim period until a reversal is decreed by a higher court or tribunal.

In the case of payroll reinstatement, even if the employer's appeal turns the tide in its favor, the reinstated employee has no duty to return or reimburse the salary he received during the period that the lower court or tribunal's governing decision was for the employee's illegal dismissal. Otherwise, the situation would run counter to the immediately executory nature of an order of reinstatement. The case of *Garcia v. Philippine Airlines*[46] is enlightening on this point:

> Even outside the theoretical trappings of the discussion and into the mundane realities of human experience, the "refund doctrine" easily demonstrates how a favorable decision by the Labor Arbiter could harm, more than help, a dismissed employee. The employee, to make both ends meet, would necessarily have to use up the salaries received during the pendency of the appeal, only to end up having to refund the sum in case of a final unfavorable decision. It is mirage of a stop-gap leading the employee to a risky cliff of insolvency.
>
> Advisably, the sum is better left unspent. It becomes more logical and practical for the employee to refuse payroll reinstatement and simply find work elsewhere in the interim, if any is available. Notably, the option of payroll reinstatement belongs to the employer, even if the employee is able and raring to return to work.

We see the situation discussed above to be present in the case before us as Wenphil observed the mandate of Article 223

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[46] G.R. No. 164856, January 20, 2009, 576 SCRA 479.

to immediately comply with the order of reinstatement by the LA. On October 29, 2001, while Wenphil's appeal with the NLRC was pending, it entered into a compromise agreement with the respondents. In this agreement, Wenphil committed to reinstate the respondents in its payroll. However, the commitment came with a condition: Wenphil stipulated that its obligation to pay the wages due to the respondents would cease if the decision of the LA would be "*modified, amended or reversed*" by the NLRC.[47]

Thus, when the NLRC rendered its decision on the appeal affirming the LA's finding that the respondents were illegally dismissed, but modifying the award of reinstatement to payment of separation pay, Wenphil stopped paying the respondents' wages.

The reinstatement salaries due to the respondents were, by their nature, payment of unworked backwages. These were salaries due to the respondents because they had been prevented from working despite the LA and the NLRC findings that they had been illegally dismissed.

We point out that reinstatement and backwages are two separate reliefs available to an illegally dismissed employee. The normal consequences of a finding that an employee has been illegally dismissed are: ***first***, that the employee becomes entitled to reinstatement to his former position without loss of seniority rights; and ***second***, the payment of backwages covers the period running from his illegal dismissal up to his actual reinstatement.[48] These two reliefs are not inconsistent with one another and the labor arbiter can award both simultaneously.

Moreover, **the relief of separation pay may be granted in lieu of reinstatement but it cannot be a substitute for the payment of backwages**. In instances where reinstatement is no longer feasible because of strained relations between the employee and the employer, separation pay should be granted. In effect,

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[47] *Id*. at note 15.

[48] *Santos v. NLRC*, G.R. No. 76721, September 21, 1987, 154 SCRA 171.

an illegally dismissed employee should be entitled to either reinstatement – if viable, or separation pay if reinstatement is no longer be viable, **plus backwages** in either instance.[49] The rationale for such policy of distinction was vividly explained in *Santos v. NLRC* under these terms:[50]

> Though the grant of reinstatement commonly carries with it an award of backwages, the inappropriateness or non-availability of one does not carry with it the inappropriateness or non-availability of the other. Separation pay was awarded in favor of petitioner Lydia Santos because the NLRC found that her reinstatement was no longer feasible or appropriate. As the term suggests, separation pay is the amount that an employee receives at the time of his severance from the service and, as correctly noted by the Solicitor General in his Comment, is designed to provide the employee with "the wherewithal during the period that he is looking for another employment." **In the instant case, the grant of separation pay was a substitute for immediate and continued re-employment with the private respondent Bank. The grant of separation pay did not redress the injury that is intended to be relieved by the second remedy of backwages, that is, the loss of earnings that would have accrued to the dismissed employee during the period between dismissal and reinstatement. Put a little differently, payment of backwages is a form of relief that restores the income that was lost by reason of unlawful dismissal; separation pay, in contrast, is oriented towards the immediate future, the transitional period the dismissed employee must undergo before locating a replacement job. It was grievous error amounting to grave abuse of discretion on the part of the NLRC to have considered an award of separation pay as equivalent to the aggregate relief constituted by reinstatement plus payment of backwages under Article 280 of the Labor Code**. The grant of separation pay was a proper substitute only for reinstatement; it could not be an adequate substitute both for reinstatement and for backwages. In effect, the NLRC in its assailed decision failed to give to petitioner the full relief to which she was entitled under the statute. [emphasis ours]

Apparently, when the NLRC changed the LA's decision (specifically, the order to award separation pay in lieu of

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[49] *Macasero v. Southern Industrial Gases Philippines*, 597 Phil. 494 (2009).

[50] *Supra* note 48, at 172.

reinstatement), Wenphil read this to mean to be the "modification" envisioned in the compromise agreement, Wenphil likewise effectively concluded that separation pay and backwages are the same or are interchangeable reliefs. This conclusion can be deduced from Wenphil's insistence not to pay the respondent's remaining backwages under its erroneous reasoning that this was the effect of the NLRC's order to Wenphil to pay separation pay in lieu of reinstatement.

We emphasize that the basis for the payment of backwages is different from that of the award of separation pay. ***Separation pay*** is granted where reinstatement is no longer advisable because of strained relations between the employee and the employer. ***Backwages*** represent compensation that should have been earned but were not collected because of the unjust dismissal. The basis for computing separation pay is usually the length of the employee's past service, while that for backwages is the actual period when the employee was unlawfully prevented from working.[51]

Had Wenphil really wanted to put a stop to the running of the period for the payment of the respondents' backwages, then it should have immediately complied with the NLRC's order to award the employees their separation pay in lieu of reinstatement. This action would have immediately severed the employer-employee relationship. However, the records are bereft of any evidence that Wenphil actually paid the respondents' separation pay. Thus, the employer-employee relationship between Wenphil and the respondents never ceased and the employment status remained pending and uncertain until the CA actually rendered its decision that the respondents had not been illegally dismissed. In the context of the parties' agreement, it was only at this point that the payment of backwages should have stopped.

A compromise agreement should not be contrary to law, morals, good customs and public policy.

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[51] *Golden Ace Builders v. Talde,* G.R. No. 187200, May 5, 2010, 620 SCRA 288.

While it is true that a compromise agreement is binding between the parties and becomes the law between them,[52] it is also a rule that to be valid, a compromise agreement must not be contrary to law, morals, good customs and public policy.[53]

In the present case, the parties' compromise agreement simply provided that Wenphil's obligation to pay the respondents' backwages shall end the moment the NLRC modifies, amends or reverses the illegal dismissal decision of LA Bartolabac. On its face, there is nothing invalid with such stipulation. Indeed, had the NLRC reversed the LA, the obligation to pay backwages would have stopped. The NLRC, however, did not decree a reversal of the finding of illegal dismissal. In fact, it affirmed the illegal dismissal conclusion, confining itself merely to a modification of the consequences of the illegal dismissal – from reinstatement to the payment of separation pay.

This "modification" of course we cannot accept; the option under the legal policy is solely limited to a ruling that the respondents *had not been illegally* dismissed. Otherwise, we would be violating the Labor Code's policy entitling illegally dismissed employees to their right to backwages even during the period of appeal. As we held in the case of *Garcia v. Philippine Airlines*:[54]

> The Court reaffirms the prevailing principle that even if the order of reinstatement of the Labor Arbiter is reversed on appeal, **it is obligatory on the part of the employer to reinstate and pay the wages of the dismissed employee during the period of appeal until reversal by the higher court**. It settles the view that the Labor Arbiter's order of reinstatement is **immediately** executory and the employer has to either re-admit them to work under the same terms and conditions prevailing prior to their dismissal, or to reinstate them in the payroll, and that **failing to exercise the options in the alternative, employer must pay the employee's salaries**. [emphasis ours]

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[52] *Ago v. Court of Appeals*, 116 Phil. 841 (1962).

[53] *Magbanua v. Uy*, 497 Phil. 518 (2005).

[54] *Supra* note 46.

This ruling embodies a principle and policy of the law that cannot be watered down by any lesser agreement except perhaps when backwages are already earned entitlements that the employee chooses to surrender for a valuable consideration (and even then, the consideration must at least be equitable). This legal policy emphasizes, too, the rule that separation pay cannot be a substitute for backwages but only for reinstatement. The award of separation pay is not inconsistent with the payment of backwages. Thus, until a higher court's or tribunal's reversal of the finding that an employee had been illegally dismissed, the employee would be entitled to receive his reinstatement salary or backwages during the period of appeal until such reversal. This is in line with the Labor Code's policy that an order of reinstatement, which can either be actual or through the payroll, is immediately executory and is not affected by the period of appeal.

Period for Computation of Backwages

The records show that the inconsistency between the labor arbitration rulings and the CA's ruling was on the period for the computation of such backwages and not on whether the respondents were still entitled to such backwages during the period of appeal until the reversal of the finding of illegal dismissal.

According to the LA, whose ruling the NLRC affirmed, the period for computation should be from February 15, 2002 until November 8, 2002 since the NLRC's decision which affirmed the LA's finding of illegal dismissal became final and executory on November 8, 2002. The LA started the counting of the period on February 15, 2002 since that was the day when Wenphil last paid the respondents' backwages.

On the other hand, the CA, in setting aside the NLRC's rulings, relied on the case of *Pfizer v. Velasco* where we ruled that the backwages of the dismissed employee should be granted during the period of appeal *until reversal by a higher court*. Since the first CA decision which found that the respondents had not been illegally dismissed was promulgated on August 27, 2003, then

the reversal by the higher court was effectively made on August 27, 2003.

As against this view, the respondents argued that the period for payment of their backwages should end on February 14, 2007 since the SC decision in G.R. No. 162447 which affirmed the CA's findings that the respondents had not been legally dismissed became final and executory on February 15, 2007.

Among these views, the commanding one is the rule in *Pfizer*, which merely echoes the rulings we made in the cases of *Roquero v. Philippine Airlines*[55] and *Garcia v. Philippine Airlines*[56] that the period for computing the backwages due to the respondents during the period of appeal should end on the date that a ***higher court*** reversed the labor arbitration ruling of illegal dismissal. In this case, the higher court which first reversed the NLRC's ruling was not the SC but rather the CA. In this light, the CA was correct when it found that that the period of computation should end on August 27, 2003. The date when the SC's decision became final and executory need not matter as the rule in *Roquero, Garcia* and *Pfizer* merely referred to **the date of reversal**, not the date of the ultimate finality of such reversal.

As a last minor detail, we do not agree with the CA that the date of computation should start on February 15, 2002. Rather, it should be on February 16, 2002. The respondents themselves admitted in their motion for computation and issuance of writ of execution that the last date when they were paid their backwages was on February 15, 2002. To start the computation on the same date would result to a duplication of wages for this day; thus, computation should start on the following date – February 16, 2002.

WHEREFORE, in light of these considerations, we hereby **DENY** the petition. The Court of Appeals' decision dated August 31, 2012 and resolution dated June 20, 2013, which annulled and set aside the March 26, 2010 decision and September 15,

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[55] G.R. No. 152329, 449 Phil. 437 (2003).

[56] *Supra* note 46.

2010 resolution of the NLRC, are hereby **AFFIRMED with MODIFICATION**. The period for the computation of backwages of respondents Almer R. Abing and Anabelle M. Tuazon should be from February 16, 2002 until August 27, 2003, when the Court of Appeals promulgated its decision reversing the NLRC's finding of illegal dismissal. No costs.

SO ORDERED.

Carpio (Chairperson), del Castillo, Perez, and *Perlas-Bernabe, JJ.,* concur.

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— Where the evidence does not conclusively prove robbery, the killing would be classified as simple homicide or murder. (*Id*.)

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